

STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own	)	
motion regarding the regulatory reviews	)	
revisions, determinations, and/or approvals	)	Case No. U-21375
necessary for DTE Electric Company	)	
to comply with Section 61 of 2016 PA 342.	)	
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**NOTICE OF PROPOSAL FOR DECISION**

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on October 17, 2025.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before November 7, 2025, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before November 21, 2025.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

**Christopher S.  
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October 17, 2025  
Lansing, Michigan

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Christopher S. Saunders  
Administrative Law Judge

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**PROPOSAL FOR DECISION**

I.

**PROCEDURAL HISTORY**

On September 23, 2024, DTE Electric Company (DTE or the Company) filed its Application Requesting Approval of its Voluntary Green Pricing (VGP) plan and biennial review of the Company's MIGreenPower program under MCL 460.1061, including updates to customer participation, amendments, additions, accompanying tariff revisions, and related relief. The timing of this filing complied with the Commission's Order in Case No. U-18349 directing the Company to file its next VGP plan review in this docket in accordance with the biennial cycle for review of VGP programs under Section 61 of 2016 PA 342.<sup>1</sup>

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<sup>1</sup> The Company's previous VGP-related case, Case No. U-21172, was filed August 31, 2022 and disposed of through partial settlements and a memorandum of understanding. The Commission order was entered on April 25, 2024, and rehearing was denied by order entered July 2, 2024.

Staff, DTE, and potential intervenors attended the November 26, 2024 prehearing conference, with intervention granted to: Soulardarity and We Want Green, Too, (collectively the Detroit Area Advocacy Organizations or DAAO); Michigan Energy Innovation Business Council (MEIBC), the Institute for Energy Innovation, Advanced Energy United, and the Coalition for Community Solar Access (collectively MEIU); the Ecology Center, the Environmental Law and Policy Center, the Union of Concerned Scientists, and Vote Solar (collectively the Clean Energy Organizations (CEO)); and Great Lakes Renewable Energy Association (GLREA). A consensus schedule was adopted at the prehearing.

By the February 13, 2025 deadline, Staff, CEO, MEIU, DAAO, and GLREA filed direct testimony and exhibits. The Company, MEIU, and DAAO filed rebuttal testimony on March 13, 2025. At the evidentiary hearing held on April 3, 2025, the testimony of all witnesses was bound into the record without the need for them to appear. The parties filed briefs and reply briefs in accordance with the established schedule.

As discussed in section II below, the record in this matter includes testimony from ten witnesses.

## II.

### **OVERVIEW OF THE RECORD**

The evidentiary record in this proceeding is contained in 2 public transcript volumes comprised of 370 pages, and a total of 173 exhibits, including Exhibits A-26 through A-31 and Exhibits DAO-137 through DAO-139,<sup>2</sup> which were admitted by

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<sup>2</sup> 2 Tr 120 & 201.  
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agreement of the parties. The following discussion is only intended to give a general overview of the principal areas addressed by each witness. Additional detail for disputed issues is included in the subsequent sections of this PFD.

A. DTE

**Kevin L. Bilyeu** is Manager, Renewable Energy Strategy and Special Projects, for DTE.<sup>3</sup> He provided rebuttal testimony in response to Dr. Sherman's recommendations regarding competitive procurement guidelines, the use of independent administrators, and the ownership allocation of projects supporting VGP programs.

**Knox W. Cameron** is the Director of Major Account Services (MAS) for DTE.<sup>4</sup> He provided testimony on the statutory compliance of DTE's VGP; the progress DTE has made in implementing its low-income community solar pilots, the Community Support pilot and the Community Impact pilot; and compliance with the Commission's order in Case No. U-21172. Mr. Cameron also presented the Company's request for changes to the MIGreenPower program and the Rider 17 tariff, and he submitted the annual VGP report as directed in Case Nos. U-18352 and U-21172.

B. Commission Staff

**Marceline A. Champion** is a Public Utilities Engineer in the Resource Optimization and Certification (ROC) Section of the MPSC.<sup>5</sup> She presented Staff's review and recommendations regarding DTE's MIGreenPower VGP programs as set forth in the Company's application.

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<sup>3</sup> Mr. Bilyeu's rebuttal testimony and qualifications are transcribed at 2 Tr 109 through 2 Tr 119.

<sup>4</sup> Mr. Cameron's qualifications, revised direct testimony, and rebuttal testimony are transcribed at 2 Tr 35 through 2 Tr 107. He sponsored Exhibits A-1 through A-18 and A-20 through A-25.

<sup>5</sup> Ms. Champion's qualifications and direct testimony are transcribed starting at 2 Tr 341. Ms. Champion sponsored Exhibits S-1.1, S-1.2, S-1.3, S-1.4, and S-1.5.

**Zachary C. Heidemann** is a Public Utilities Engineer in the ROC Section of the MPSC who testified regarding the mathematical outcome if DG RECs are used by the Company for either VGP or renewable portfolio standard (RPS) compliance and the effect this has on the renewables required by the RPS.<sup>6</sup>

C. Clean Energy Organizations

**William D. Kenworthy** is Senior Regulatory Director - Midwest for Vote Solar.<sup>7</sup> He testified regarding the CEOs' history of advocacy on behalf of community solar, as well as the benefits of community solar projects, and he provided some of the details of the community solar proposal advanced jointly by MEIBC and the CEOs. He also testified regarding perceived shortcomings in DTE's Low-Income Solar Council (LISC) and in the Community Impact Pilot.

D. The Detroit Area Advocacy Organizations

**Khary Frazier** is the Communications Team Lead at Soulardarity and the founder of Detroit is Different.<sup>8</sup> He explained the benefits of low-income community solar, described what he characterized as DTE's inadequacies in its Community Connection Straw Proposal, and outlined the Company's failures to make reasonable efforts in its Community Impact Pilot. He provided both support and critique of the CEO's and MEIU's joint alternate community solar proposal in his rebuttal testimony.

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<sup>6</sup> Mr. Heidemann's qualifications and direct testimony are transcribed at 2 Tr 352 through 2 Tr 367. Mr. Heidemann sponsored Exhibits S-2.1, S-2.2, S-2.3, S-2.4, and S-2.5.

<sup>7</sup> Mr. Kenworthy's qualifications and direct testimony are transcribed at 2 Tr 289 through 2 Tr 305. Mr. Kenworthy sponsored Exhibits CEO-1, CEO-2, and CEO-3.

<sup>8</sup> Mr. Frazier's qualifications, direct testimony, and rebuttal testimony are transcribed at 2 Tr 122 through 2 Tr 174. Mr. Frazier sponsored Exhibits DAO-1 through DAO-48.

**Juan Shannon** is the President and Executive Director of the Parker Village Foundation in Highland Park, Michigan, and he also runs multimedia company Modern Tribe Communications, while serving on DTE's Low Income Solar Council (LISC).<sup>9</sup> He testified regarding his perceptions and experiences with DTE's shortfalls in its interactions with the LISC and in effectively pursuing innovative solutions.

E. Great Lakes Renewable Energy Association

**John Richter** is on the Board of Directors, and is Chairman, of GLREA'S Policy Committee.<sup>10</sup> He testified regarding DTE's calculation of the capacity credit for non-contract VGP plan customers; presented an alternative proposal to address a future shortfall in available RECs to meet VGP customer demand because, in his opinion, DTE's plan is unreliable; and addressed how DTE's proposed change to its fixed-price option may result in overcharging customers.

F. Michigan Energy Innovation Business Council, Institute for Energy Innovation, Advanced Energy United

**John D. Albers**, Director Overseeing Regulatory Policy for Central States for Advanced Energy United, Inc., testified regarding DTE's proposed purchase of RECs from behind-the-meter DG resources, primarily solar energy systems.<sup>11</sup>

**Laura S. Sherman**, President of the Michigan Energy Innovation Business Council and the Institute for Energy Innovation, testified regarding competitive procurement

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<sup>9</sup> Mr. Shannon's qualifications and revised direct testimony are transcribed at 2 Tr 176 through 2 Tr 200. Mr. Shannon sponsored Exhibits DAO-101 through DAO-136.

<sup>10</sup> Mr. Richter's qualifications and direct testimony are transcribed at 2 Tr 308 through 2 Tr 339. Mr. Richter sponsored Exhibits GLREA-1 and GLREA-2.

<sup>11</sup> Mr. Albers' qualifications, direct testimony, and rebuttal testimony are transcribed at 2 Tr 253 through 2 Tr 286. He sponsored Exhibits MEIU-18 through MEIU-41.

concerns and renewable energy resource ownership issues.<sup>12</sup> She further testified regarding the Company's energy storage proposals, customer credits in the MIGreenPower program, and the Company's "community solar" proposals. She presented MEIU's "Proposed Modified Community Connection Solar Pilot" offered jointly with the CEOs.

### III.

#### **DISCUSSION**

The contested issues in this matter will be addressed individually in the following sections.

#### A. Distributed Generation Renewable Energy Credits

In the Company's 2022 biennial VGP filing, the Commission directed DTE "to submit a new proposal for purchasing distributed generation ("DG") renewable energy credits ("RECs")."<sup>13</sup> Mr. Cameron testified for DTE that the Commission ordered the Company propose an amendment to Rider 17 to allow DTE to purchase RECs from DG customers. He added that, on April 25, 2024, the Commission ordered that the Company provide a revised proposal for the purchase of DG RECs.<sup>14</sup> Currently, VGP customers enrolling fewer than 2,500 MWh per year receive a monthly energy credit based on the average value of the energy that subscribed solar and wind parks generated during the most recent Midcontinent Independent System Operator (MISO) planning year, and VGP customers enrolling 2,500 MWh or more receive a monthly energy credit based on the

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<sup>12</sup> Dr. Sherman's qualifications and direct testimony are transcribed at 2 Tr 203 through 2 Tr 251. She sponsored Exhibits MEIU-1 through MEIU-17.

<sup>13</sup> 2 Tr 39.

<sup>14</sup> 2 Tr 42-43.

monthly weighted average MISO Real Time Locational Marginal Price (RT-LMP) for the generation nodes of the Company's renewable resources.<sup>15</sup> Mr. Cameron explained that "capacity-based credit for all customers is based on their respective subscription and the Effective Load Carrying Capability ("ELCC") of the underlying solar and wind parks as well as the value of the Auction Clearing Price in the annual MISO Planning Resource Auction for the appropriate zone."<sup>16</sup> Renewable energy credits (RECs) may be retired at the request of the subscriber.<sup>17</sup>

Mr. Albers for MEIU testified that "generally a REC is recognized as an instrument (sometimes referred to as a certificate) that represents the property rights to the environmental, social, and other non-power attributes of renewable electricity generation," and that generation of one megawatt hour (MWh) of renewable energy "typically results in one REC."<sup>18</sup> Only the owner of a REC can claim to be using renewable energy, irrespective of the use of the electricity generated.<sup>19</sup> Mr. Albers added that RECs are defined by MCL 460.1011(c), and that the certification and tracking program established by the Commission under MCL 460.1041 is the Michigan Renewable Energy Certification System (MIRECS), which issues a unique and traceable serial number for every megawatt hour of qualifying renewable energy generated by MIRECS-registered facilities.<sup>20</sup> Mr. Albers presented that, currently, pursuant to MCL 460.1179 and DTE's

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<sup>15</sup> 2 Tr 44-45.

<sup>16</sup> 2 Tr 45.

<sup>17</sup> 2 Tr 45.

<sup>18</sup> 2 Tr 260.

<sup>19</sup> 2 Tr 260.

<sup>20</sup> 2 Tr 260-261.

Rider 18, customers own their RECs, and the Company may purchase RECs by separate agreement from customers willing to sell them.<sup>21</sup>

Mr. Albers went on to outline the history of DTE's DG REC purchase proposal.<sup>22</sup> In Case No. U-20836, GLREA proposed that the Commission require DTE to purchase RECs from Rider 18 customers and use them in its Rider 17 MIGreenPower VGP Program, with RECs to be purchased at 80% of the net premium for the voluntary MIGreenPower program, and the remaining 20% of the REC value used to reduce the Rider 17 premium. According to Mr. Albers, at the time, Staff supported the general REC purchase concept, particularly to support the VGP programs, and the PFD in that case did not oppose the concept.<sup>23</sup> The Commission's order in that case directed that DTE propose Rider 17 and 18 amendments in Case No. U-21172 to facilitate the Company's purchase of RECs from DG customers at the option of the DG customers themselves.<sup>24</sup>

Mr. Albers testified that DTE's proposed changes to Riders 17 and 18 in Case No. U-21172 did not comply with the Commission's order in Case No. U-20836, resulting in objections from MEIU and GLREA, and resulting in alternative compensation values proposed by MEIU, GLREA, and Staff. The Commission's April 25, 2024 order in case No. U-21172 recognized the PFD's findings that DTE had not complied with the Commission's directives from Case No. U-20836, but further noted that, after the record had closed but before the Commission issued its order, the legislature amended the RPS in MCL 460.1028.<sup>25</sup> The Commission expressed concern that the statutory changes might

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<sup>21</sup> 2 Tr 261.

<sup>22</sup> 2 Tr 261-267.

<sup>23</sup> 2 Tr 261-262.

<sup>24</sup> 2 Tr 263, citing the November 18, 2022 order in Case No. U-20836, p. 445.

<sup>25</sup> 2 Tr 264-265.

mean that requiring the Company to purchase RECs would cause double counting of a REC from DG outflow because this had already been factored into the utility's new RPS calculation.<sup>26</sup>

As interpreted by Mr. Albers, the Commission's April 2024 order, clarified by its July 2, 2024 order in Case No. U-21172, directed DTE to file a new proposal for purchasing RECs from DG customers after "outreach" with the intervenors in the case.<sup>27</sup> The Commission maintained that the question of whether REC purchases by the utility would result in double counting under the 2023 PA 235 RPS calculation was not yet decided.<sup>28</sup> According to Mr. Albers, the Commission also noted that its prior orders "did not deprive the Company of its discretion to purchase RECs from DG customers based on need," and that anything further would be premature until the Company gathered additional information and viewpoints.<sup>29</sup> Mr. Albers "underst[ood] this to mean that the Commission does not see Public Act 235 as precluding it from requiring DTE to purchase RECs from DG customers."<sup>30</sup> However, he interpreted Mr. Cameron's testimony, and the Company's discovery responses, as avoiding saying that there is no double counting issue that would arise if DTE purchased RECs from DG customers.<sup>31</sup>

Mr. Richter's testimony echoed that of Mr. Albers regarding the history of the REC purchase proposals.<sup>32</sup> He noted that he initiated the recommendations for compelling DTE to purchase RECs from DG customers as a means of reducing "the premium of the

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<sup>26</sup> 2 Tr 265-266.

<sup>27</sup> 2 Tr 266.

<sup>28</sup> 2 Tr 266-267.

<sup>29</sup> 2 Tr 267.

<sup>30</sup> 2 Tr 267.

<sup>31</sup> 2 Tr 271-272.

<sup>32</sup> 2 Tr 326-328.

VGP program.”<sup>33</sup> He added that DTE’s proposal regarding the purchase of RECs from DG customers in Case No. U-21172 was made in supplemental testimony because the issue was referred from Case No. U-20836 after Case No. U-21172 was already open. Mr. Richter’s testimony also quoted the Commission’s order in that case requiring the Company to file a new REC purchase proposal in this VGP case.<sup>34</sup>

Mr. Richter testified that what the Company has proposed is not a new proposal, but a reintroduction of what was previously proposed. He further testified that the Company had addressed the issue of double counting RECs by interpreting PA 235 as subtracting DG outflow from the Company’s sales, thereby reducing the utility’s REC requirement, but, because DG generation consumed on-site is already excluded from the calculation, the RECs from the DG outflow, and the right to sell them, are retained by the DG customer.<sup>35</sup> Mr. Richter testified that the statutory formula for calculating the REC requirement separates RECs from DG outflow, possibly for the purpose of incentivizing DG expansion.<sup>36</sup> In Mr. Richter’s opinion, interpretations of the law that turned RECs over to the Company automatically were not consistent with the law, and any prohibition of REC purchase by utilities would be confiscatory of the customer’s property rights.<sup>37</sup>

Mr. Cameron clarified in his testimony that the Company proposed changes to Rider 17 and Rider 18 in Case No. U-21172 at the Commission’s direction, and that PA 235 was passed after the record was closed in that case but before the Commission

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<sup>33</sup> 2 Tr 326.

<sup>34</sup> 2 Tr 327.

<sup>35</sup> 2 Tr 328-329.

<sup>36</sup> 2 Tr 329-330.

<sup>37</sup> 2 Tr 330-331.

entered an order.<sup>38</sup> Mr. Cameron indicated that the Company had proposed that it could purchase RECs from DG customers, solely at its own option, to supplement either the REC portfolio to comply with required RPS or to supplement the REC portfolio the Company used to fulfill subscriptions in the VGP program. DTE had further proposed “to compensate DG customers at the prevailing REC market price,” and that the Company would bear the costs to certify or transfer the RECs purchased to DTE.<sup>39</sup> He testified that the Company’s calculation for identifying the RECs needed to comply with the RPS was altered by Public Act 235 of 2023 (Act 235). As a result, according to Mr. Cameron, the change led to the Commission’s concern that the purchase of DG RECs could lead to double counting in the RPS calculation.<sup>40</sup>

Mr. Cameron further testified that, to address the Commission’s concerns, DTE held an outreach session on June 20, 2024 to provide an overview of PA 235, to consider “how the purchase of DG RECs are to be in harmony with PA 235,” and to obtain input from interested parties regarding the purchase of DG RECs.<sup>41</sup> This resulted in the Company’s presentation and Microsoft form found in Exhibit A-3, and presentations by GLREA and MEIBC with 5 Lakes.<sup>42</sup> Ultimately, DTE concluded that there was “no consensus” regarding potential double counting of RECs under PA 235, but, based on the MEIBC/5 Lakes interpretation, also concluded that the formula for electric provider

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<sup>38</sup> 2 Tr 59-60.

<sup>39</sup> 2 Tr 59-60.

<sup>40</sup> 2 Tr 61.

<sup>41</sup> 2 Tr 61-62.

<sup>42</sup> 2 Tr 62.

RPS REC portfolio requirements did not require any change to the Company's proposal to purchase DG RECs at its own discretion and at the "prevailing REC market price."<sup>43</sup>

Similar to Mr. Richter's testimony, Mr. Albers asserted that DTE's DG REC purchase proposal is the same as the contested proposal from Case No. U-21172.<sup>44</sup> Mr. Albers also observed that this proposal does not define "prevailing REC market price."<sup>45</sup> To this end, Mr. Albers characterized DTE's discovery responses as defining "prevailing REC market price" as "equal to either the last executed agreement to purchase RECs or an average of quotes received during [an] unspecified period."<sup>46</sup> Mr. Albers found the "lack of clarity ... disconcerting" from an "administrative perspective."<sup>47</sup> However, he conceded that the definition might be moot as a practical matter because DTE averaged two REC-only transactions per year over the last two years, with the prevailing REC market price of \$2.50 per REC in 2023 and \$1.00 per REC in 2024.<sup>48</sup>

Furthermore, Mr. Albers took issue with the Company's solicitation of input as required by the Commission in prior cases, characterizing DTE's efforts as inadequate, hosting only a single hour outreach session in June 2024, from which no notes were taken or documents produced.<sup>49</sup> According to Mr. Albers, DTE reached out only to intervenors who did not address the purchase of RECs in their testimony in Case No. U-21172. In his view, the Company determined that no changes were needed to its REC purchase

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<sup>43</sup> 2 Tr 63-64.

<sup>44</sup> 2 Tr 267.

<sup>45</sup> 2 Tr 268.

<sup>46</sup> 2 Tr 268.

<sup>47</sup> 2 Tr 268.

<sup>48</sup> 2 Tr 268-269.

<sup>49</sup> 2 Tr 269-271.

proposal based on limited feedback from parties who initially took no position on the purchase proposal.<sup>50</sup>

Mr. Albers testified that there is nothing in MCL 460.1028 or Public Act 235 that accounts for, or prevents, transferring RECs from DG customers to the Company. And, while MCL 460.1028(2) provides the formulas to determine the Company's RPS obligation, the formulas do not indicate the compensation that should be paid to a REC owner, and do not change either the Company's Tariff Rider 18 or MCL 460.1179.<sup>51</sup> Nevertheless, to Mr. Albers, the Company's current REC purchase proposal does not take into account the Commission's directives to file a new proposal or that REC purchases "should be at the option of the DG customer."<sup>52</sup> Mr. Albers listed potential benefits of such purchases, and expressed concern that leaving the purchase of RECs from DG customers at the option of the Company has not resulted in the acquisition of "a single REC from DG customers."<sup>53</sup>

Mr. Albers broadly recommended that the Commission should conclude that the Company's purchase of RECs from DG customers for the VGP program would not result in the double counting of RECs; DTE's proposal to purchase RECs from DG customers at the Company's discretion should be rejected; and DTE should be required to purchase RECs from DG customers in compliance with MCL 460.1028(5).<sup>54</sup> To facilitate this, he first recommended that the Commission direct DTE to file a version of Rider 18 within 30 days that enables customers to sell at their sole discretion all RECs the customer's DG

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<sup>50</sup> 2 Tr 270-271.

<sup>51</sup> 2 Tr 272-273.

<sup>52</sup> 2 Tr 273-274.

<sup>53</sup> 2 Tr 274.

<sup>54</sup> 2 Tr 274.

system produces.<sup>55</sup> Second, he recommended that DTE pay the net premium paid by customers participating in the Rider 17 MIGreenPower Program for purchased RECS where the net premium remains positive based on a 5-year rolling average of net premiums. This was to properly compensate customers selling their RECs and to encourage customers to sell their RECs.<sup>56</sup> Third, Mr. Albers recommended that the Commission direct DTE to share with interested parties a standard contract form for REC purchases within 45 days, with a reasonable opportunity for comment before the Commission approves the standard REC purchase contract.

Fourth, Mr. Albers recommended that the Commission require the Company to accept a customer's inverter's recording of production instead of requiring installation of a costly generation meter where the inverter meets ANSI C.12 standards.; Where such an inverter does not exist and the customer is unwilling to install one, the Company must clarify that customers will only receive credit for RECs associated with energy exported to the grid.<sup>57</sup> Fifth, he recommended that DTE be required to inform all existing and new Rider 18 customers in writing of the option of selling RECs to the Company. Finally, he supported DTE's proposal concerning certification of RECs.<sup>58</sup>

Mr. Richter testified that the Company's purchase of RECs was in the interest of non-DG customers because it could reduce the cost of the VGP program, and it could fill the shortfall between Company-generated RECs and those needed by the VGP program.<sup>59</sup> He, too, supported creation of a standard REC purchase contract, suggesting

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<sup>55</sup> 2 Tr 275.

<sup>56</sup> 2 Tr 276.

<sup>57</sup> 2 Tr 277-278.

<sup>58</sup> 2 Tr 278-279.

<sup>59</sup> 2 Tr 331-332.

that the same or similar contract could also be used to purchase RECs from Michigan qualifying facilities (QFs) under the Public Utilities Regulatory Policies Act (PURPA), noting that creating separate agreements for REC purchases from each DG customer would be unwieldy.<sup>60</sup> Mr. Richter recommended that, because “VGP is a legally mandatory program,” DTE should be preparing to purchase RECs from DG customers to meet program requirements, and to meet non-contracted VGP customer demand while avoiding the creation of waitlists.<sup>61</sup>

Mr. Heidemann did not make recommendations, but instead presented Staff’s mathematical calculations regarding what happens to the number of renewables required by the RPS if DG RECs are used by DTE for either VGP or RPS compliance.<sup>62</sup> This was presented in Simplified Model: Case A through Simplified Model Case E, found in Exhibits S-2.1 through S-2.5, with RPS calculated as required under 2023 PA 235, Section 38, Subsections b(i) and b(ii).<sup>63</sup> Mr. Heidemann introduced the equations used by Staff,<sup>64</sup> and explained that VGP load is removed from the equation because it is outside of the RPS requirement.<sup>65</sup> Mr. Heidemann testified that the parts of the simplified equation used by Staff sought only to view what effect DG production would have, so that the initial load without “DG on the system” was fixed for 100 MWh; VGP load was assumed to be 10, except for Case D; the RPS compliance percentage was constant at 60%; and DG outflow was set at 40% for the sake of simplicity.<sup>66</sup> For Staff, if DG production had not been fixed,

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<sup>60</sup> 2 Tr 332-334.

<sup>61</sup> 2 Tr 333-335 & 338-339.

<sup>62</sup> 2 Tr 357.

<sup>63</sup> 2 Tr 357-358.

<sup>64</sup> 2 Tr 358-366.

<sup>65</sup> 2 Tr 358.

<sup>66</sup> 2 Tr 358-359.

the range of DG production under the simplified model ran from zero to ten in .5 intervals, capped because a utility may cap distributed generation at 10% of the in-state peak load, or 10 MWh.<sup>67</sup>

Mr. Heidemann further testified that Staff acted on the assumption that DG production consumed onsite would decrease the initial load.<sup>68</sup> Referring to column (i) of Exhibits S-2.1 through S-2.5, Mr. Heidemann indicated that the total RECs required when the simplified model assumes no DG is present is 65, with the exception of Case E, and that a “REC requirement decrease is the expected result” as DG production rises.<sup>69</sup> Production remains constant where VGP load is fixed.<sup>70</sup> The RPS requirement, however, does not “tell the complete story of what is happening” because total renewable production and nonrenewable production may also be examined, with renewable production having an inverse relationship to non-renewable production within a limited range of change.<sup>71</sup>

According to Mr. Heidemann, use of DG outflow RECs to satisfy VGP subscriptions would, in the simplified model, reduce the VGP RECs produced or purchased.<sup>72</sup> He noted that Case B remains largely constant when DG increases, and that, in Case C, where DG RECs are used for compliance, the required RECs are “reduced when DG outflow increases,” with total renewable and non-renewable reduction identical to Case B.<sup>73</sup> Case D increases DG production from zero to 10, and finds that renewable production is 58

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<sup>67</sup> 2 Tr 360.

<sup>68</sup> 2 Tr 360-361.

<sup>69</sup> 2 Tr 361-362.

<sup>70</sup> 2 Tr 362.

<sup>71</sup> 2 Tr 362-363.

<sup>72</sup> 2 Tr 363-364.

<sup>73</sup> 2 Tr 364-365.

and non-renewable generation is 42 when DG production is 10.<sup>74</sup> Per Mr. Heidemann, “the RPS calculation is insensitive to whether DG recs are used for VGP or RPS compliance in both Cases B and C.”<sup>75</sup>

Mr. Heidemann testified that the scenario in Staff’s Case E shows what would happen if there were no VGP load and no DG RECs used for RPS compliance, “renewable production is simply 60 as the load is 100 and the RPS is set to 60% and is equal to the *REC Requirement* variable,” representing “the total amount of RECs generated or procured by the utility” on line 7, columns J through n, in Exhibit S-2.5.<sup>76</sup> Under the conditions in Case E, with no VGP or DG, the total renewable production is higher than in Case D, where there is 10% VGP and DG production.<sup>77</sup> From all of this, Mr. Heidemann concluded that the model demonstrated that, “when all else is held equal” and “the amount of DG RECs is increased and used to either satisfy VGP or satisfy RPS requirement compliance, it reduces the total amount of renewable generation needed to comply with the standard.”<sup>78</sup> Use of the various modifications and scenarios with the simplified model bear this out.<sup>79</sup>

Mr. Heidemann stated, however, that the analysis was meant to show the outcomes from using DG REC purchases for VGP or RPS requirement compliance, and that Staff was not suggesting that DTE should, or should not, be allowed to purchase RECs from DG customers. He added that these were conservative numbers for purposes

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<sup>74</sup> 2 Tr 365.

<sup>75</sup> 2 Tr 365.

<sup>76</sup> 2 Tr 365-366.

<sup>77</sup> 2 Tr 366.

<sup>78</sup> 2 Tr 366.

<sup>79</sup> 2 Tr 366.

of simplification and illustration, assuming that DTE “procured all possible DG RECs.”<sup>80</sup> When asked if there was a way to reduce the possibility that using DG RECs would reduce the number of renewables overall, Mr. Heidemann indicated that there is no time variable in the simplified model; use of DG RECs could be used to address planned renewable resource delays, or to fill VGP subscriptions on the waiting list while additional VGP resources are being built would not displace the planned resource.<sup>81</sup>

Mr. Albers expressed concern in his rebuttal testimony that Mr. Heidemann, and Staff in general, along with the Company, did not address the Commission’s concern in the April 25, 2024 order in Case No. U-21172 regarding the potential for double counting of RECs purchased by DTE from DG customers.<sup>82</sup> And, while Staff has favored requiring DTE to purchase RECs from DG customers in past cases, Mr. Albers took the position that Staff did not express a position in this case.<sup>83</sup> From this, Mr. Albers inferred that Staff does not believe that double-counting will occur if DTE purchases RECs from DG customers, because Staff’s models would not assess the impact of DG REC purchases if Staff believed such purchases were not legally sound.<sup>84</sup>

Mr. Albers also testified in rebuttal that MCL 460.1028(5)(c) provides that the Company can meet RPS by purchasing RECs without the related energy or capacity; as a result, the legislature has already implicitly determined that RECs should be purchased from DG customers.<sup>85</sup> Mr. Albers believed that the legislature may also have recognized

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<sup>80</sup> 2 Tr 367.

<sup>81</sup> 2 Tr 367.

<sup>82</sup> 2 Tr 282-283.

<sup>83</sup> 2 Tr 282-283.

<sup>84</sup> 2 Tr 283.

<sup>85</sup> 2 Tr 283-284.

value outside of Staff's equations, such as the benefits of reducing load, as well as reducing transmission and distribution costs, all of which should be considered and facilitated.<sup>86</sup> He took issue with Staff's equation defining load as the utility load when there is no DG, because metering is not extensive enough for the utility to know the extent of DG production used by an individual customer, "let alone DG production used onsite by all of its DG customers combined."<sup>87</sup>

To Mr. Albers, because a customer's load exists regardless of fluctuations in customer usage and on-location consumption, the RPS calculation will be based only on the weather normalized megawatt hours of electricity sold in the prior year or the average number of megawatt hours of electricity sold annually during the prior three years, as set forth in MCL 460.1028(2)(b)(i) and (ii); any other factors create doubt in the RPS calculation.<sup>88</sup> Mr. Albers questioned Mr. Heidemann's conclusion that the purchase of RECs from DG customers reduces the renewable generation needed to meet RPS because the selling of RECs may actually enable the installation of DG by making it a reasonable investment. Finally, Mr. Albers took issue with Mr. Heidemann's comments regarding DG possibly displacing renewable energy generation, because, to Mr. Albers, DG is renewable generation, and RECs produced from a home DG customer have "the same environmental attributes as a REC produced from a utility-scale solar facility."<sup>89</sup> He again recommended that the Commission require DTE to purchase RECs from DG customers.<sup>90</sup>

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<sup>86</sup> 2 Tr 284.

<sup>87</sup> 2 Tr 285.

<sup>88</sup> 2 Tr 285.

<sup>89</sup> 2 Tr 285-286.

<sup>90</sup> 2 Tr 286.

In response to Mr. Albers, Mr. Cameron took the position that only market value should be paid for RECs. Mr. Cameron stated that using a different price would result in higher costs to, and a subsidy of the program by, all customers, thereby compensating DG customers at a rate greater than the value of the REC being purchased.<sup>91</sup> He quoted Staff's position in Case No. U-21172 that pricing RECs based on a net premium of the VGP program should be rejected because the net premium takes the total cost of the program, including the cost of purchasing RECS and marketing, and subtracting the value of the energy produced, so "the net premium is a reflection of more than simply the cost of RECs."<sup>92</sup> Mr. Cameron further quoted that adoption of MEIBC's "methodology would effectively compensate DG customers for more than the value of the REC they are providing."<sup>93</sup> He also reiterated DTE's position that REC purchases should be at the Company's discretion.<sup>94</sup>

In further response to Mr. Albers, and his contention that the Company failed to properly engage with interested parties, Mr. Cameron testified that DTE did everything that the Commission directed, and that was agreed upon, in Case No. U-21172 with the outreach session it held in June 2024, and to which MEIU was invited.<sup>95</sup> According to Mr. Cameron, the minimal comments and feedback provided through that process left the Company with limited input or consensus from interested parties. As a result, the

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<sup>91</sup> 2 Tr 96-97.

<sup>92</sup> 2 Tr 96-97, quoting Staff's initial brief in Case No. U-21172.

<sup>93</sup> 2 Tr 96-97, quoting Staff's initial brief in Case No. U-21172.

<sup>94</sup> 2 Tr 97.

<sup>95</sup> 2 Tr 98.

Company adopted a proposal by Douglas Jester of 5 Lakes Energy/MEIBC to address the Commission's double counting concerns regarding RECs.<sup>96</sup>

In response to Mr. Heidemann, Mr. Cameron generally agreed with his conclusions that the total amount of renewable generation needed to comply with the RPS standard will decrease due to an increase in DG production, the use of DG RECs to fulfill VGP subscriptions, and to meet RPS requirements.<sup>97</sup> However, Mr. Cameron first noted that Mr. Heidemann's presentation assumes that the Company will purchase all available DG RECS and use them for temporary situations without displacing renewable resources. Mr. Cameron then concluded "[t]herefore, it is important that the Company not be obligated to purchase RECs generated from the outflow recordings of DG customers."<sup>98</sup>

GLREA addresses the subject of DG RECs in its brief, noting that Mr. Cameron's conclusion, based on Mr. Heidemann's testimony, that REC purchases should not be compulsory, does not actually appear in Mr. Heidemann's testimony.<sup>99</sup> It states that it agrees with MEIC/5 Lakes Energy's interpretation that DTE buying RECs and using them for VGP or RPS compliance would not be double counting. GLREA echoes other intervenors, noting that DTE did not file a genuinely new DG REC purchase proposal, and criticizing DTE for ignoring the proposals made during the outreach meeting, and expressing concern that DTE is "currently anticipating a shortfall in RECs in their VGP program."<sup>100</sup> GLREA further criticizes Mr. Heidemann's testimony for functioning on the unspoken assumption that it would be "unfortunate" if fewer renewables were required

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<sup>96</sup> 2 Tr 98-99.

<sup>97</sup> 2 Tr 99.

<sup>98</sup> 2 Tr 99-100.

<sup>99</sup> GLREA brief, 12.

<sup>100</sup> GLREA brief, 11.

while failing to consider affordability and reduction of the cost of compliance, with GLREA asserting that purchasing DG customer RECs would be a better solution to a VGP REC shortage than creating wait lists or requesting voluntary enrollment curtailments from large customers.<sup>101</sup>

In addition, GLREA's brief provides a short summary of Mr. Albers' testimony and recommendations, agreeing with all of his points, but stressing the need for clarity beyond the Company's proposed "prevailing REC market price" for the REC purchase price.<sup>102</sup> GLREA emphasizes the need for DTE to generate a standard-offer REC purchase contract, noting that the Company has over 70,000 DG customers, and that independently negotiating purchase contracts, whether at the customer's or the Company's discretion, is not reasonable. It is GLREA's position that a standard contract would facilitate DTE's purchase of RECs to meet VGP demand to avoid a shortfall in VGP compliance, with the brief recommending that such a standard-offer contract be submitted to the Commission no later than DTE's next VGP filing.<sup>103</sup>

MEIU's brief relies upon the previously admitted testimony of Mr. Albers, again seeking a formal finding that double-counting is not an issue and advancing the alternative DG REC purchase proposal Mr. Albers recommended.<sup>104</sup> MEIU again outlines the history of the proposal to require DTE to purchase DG RECs at a just compensation rate, dating back to the Company's 2022 rate case, No. U-20836, and getting greater attention in Case No. U-21172.<sup>105</sup> As part of this recitation, MEIU decries DTE's lone,

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<sup>101</sup> GLREA brief, 11-12.

<sup>102</sup> GLREA brief, 12-13.

<sup>103</sup> GLREA brief, 11-12.

<sup>104</sup> MEIU brief, 27-36.

<sup>105</sup> MEIU brief, 27-29.

one-hour outreach session on June 20, 2024, that was conducted on 10 days' notice and without any coordination with the availability of interested parties, and with minimal follow-up on DTE's part.<sup>106</sup> MEIU also outlines that, because the MWh from DG outflow are "netted from the total sales against which a utility is required to demonstrate compliance with the state's RPS," and VGP MWh are removed from total utility sales before calculating the number of RECs necessary to satisfy the RPS, this gave rise to the Commission's concern that requiring the purchase of DG RECs and using them to serve VGP demand or RPS compliance might result in double-counting.<sup>107</sup>

MEIU takes issue with the fact that DTE's DG REC purchase tariff proposal is unchanged from Case No. U-21172, leaving full discretion whether to purchase DG RECs with the Company, and not with the customer. The proposal also indicates that the Company will pay the "prevailing REC market price" that, as MEIU characterize it, means "either the amount in the last executed agreement to purchase RECs or an average of quotes" from an indefinite period of time, based on DTE's discovery responses.<sup>108</sup> Either way, MEIU relies on Mr. Albers' testimony that DTE's approaches use too small a sample size.<sup>109</sup>

Returning to the potential issue of double-counting, MEIU agrees that no double-counting will occur if DG REC purchases are permitted, and asserts that, to find otherwise, would run counter to the clear intent of Act 235.<sup>110</sup> MEIU summarizes Mr. Albers' testimony as "the 'renewable' aspect of renewable energy can be severed from the

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<sup>106</sup> MEIU brief, 29.

<sup>107</sup> MEIU brief, 28-29.

<sup>108</sup> MEIU brief, 30.

<sup>109</sup> MEIU brief, 30.

<sup>110</sup> MEIU brief, 29-33.

energy and traded separately,” but, where the REC is not sold with the energy, the “energy is no longer legally renewable.”<sup>111</sup> This is because customers continue to own the generated RECs under MCL 460.1179, which, carried to its logical conclusion, would permit the sale of that REC from the customer to the Company without double-counting any other aspect of the renewable energy process.<sup>112</sup>

Examining Staff’s testimony regarding the mathematical investigation of using DG RECs for VGP or RPS compliance, and its impact on the “number of renewables required by the RPS,” MEIU contends in its brief that all of the fact patterns considered are “within the allowable scope of the ordinary operation of Public Act 295 as amended by Public Act 235 and all are means of complying with its requirements.”<sup>113</sup> Any suggestion on Mr. Heidemann’s part that the Commission decline to permit the purchase of DG RECs out of a policy preference for using other renewable energy sources for the statutory formula would violate Public Act 235, with MEIU asserting that “DG *is* renewable generation.”<sup>114</sup> MEIU’s brief sums it up thus, “Public Act 235’s amendments ... in no way limit the use to which DG RECs can be put, including for utility RPS compliance or VGP programs.”<sup>115</sup>

MEIU’s brief takes the position that DTE’s DG REC purchase proposal should be rejected for three primary reasons. First, DTE did not take stakeholder input into account in generating a genuinely new proposal, as was directed by the Commission in Case No. U-21172. Second, DTE has not complied with the Commission’s directives in Case No. U-20836 that DG REC purchases should be at the discretion of the customer, and not the

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<sup>111</sup> MEIU brief, 30-31.

<sup>112</sup> MEIU brief, 31-32.

<sup>113</sup> MEIU brief, 32.

<sup>114</sup> MEIU brief, 32-33. [Emphasis in original.]

<sup>115</sup> MEIU brief, 33.

Company. This is of particular concern because, with the purchase left to DTE's discretion, no purchases have taken place. Third, DTE's proposed tariff changes undervalue the RECs when formulating a proper purchase price.<sup>116</sup>

As an alternative, MEIU's brief asserts that Mr. Albers' recommendations to improve the tariff should be adopted. These include alternate versions of Riders 17 and 18, particularly Mr. Albers' red line version of Rider 18; setting the DTE REC purchase price based on 100% of the 5-year rolling average value of the net premium paid by MIGreenPower Program customers under Rider 17; creating a standard REC purchase agreement to be approved by the Commission; and allowing suitable inverters to be used for REC accounting and certification instead of requiring a generation meter.<sup>117</sup> The brief also highlights Mr. Albers' testimony that DTE be required to notify its Rider 18 customers in writing of the opportunity to sell RECs, and that MEIU support the Company's existing proposal to incur the costs of DG REC certification for purchased DG RECs.<sup>118</sup>

In contrast to intervenor interpretations of Mr. Heidemann's testimony, Staff's brief takes the position that purchase of DG RECs results in double counting that is contrary to Act 235 and asserts that the Company agrees.<sup>119</sup> As a result, Staff recommends against the sale of DG RECs to DTE.<sup>120</sup> Staff explains that "the term 'load' [is] synonymous for 'sales' in its model."<sup>121</sup> Providing examples from Mr. Heidemann's testimony and the modeling, Staff clarifies that Mr. Heidemann's testimony about the RPS

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<sup>116</sup> MEIU brief, 33-34.

<sup>117</sup> MEIU brief, 34-35.

<sup>118</sup> MEIU brief, 34-35.

<sup>119</sup> Staff brief, 9-13.

<sup>120</sup> Staff brief, 9.

<sup>121</sup> Staff brief, 10.

calculation and the impact that the purchase of DG RECs would have on the calculation illustrates that the sale of DG RECs would result in double counting and a reduction in the amount of renewables generated to meet RPS requirements.<sup>122</sup> The brief asserts that Mr. Albers misunderstood Mr. Heidemann's testimony, clarifying that DG displacement of "a large portion of renewable energy generation" is a function of the simplified model showing that the "amount of renewable generation in the simplified model is insensitive to the increase in DG amount" unless DG RECs are double counted.<sup>123</sup>

Staff also clarifies that, while Mr. Heidemann did not use the words "double counted," that is, in fact still a problem he was communicating in his testimony.<sup>124</sup> Staff notes that, because time is not a variable, and load is fixed, the "only dependent variable is the amount of DG on the system."<sup>125</sup> The variation of the simplified model, equation 2.2, describes that an increase in DG reduces "the amount of electricity sold by the company due [to] the load being served by onsite generation," leaving the RPS calculation based on the weather normalized amount of electricity actually sold in the previous year.<sup>126</sup> This is the only way to reach a mathematically correct outcome and to avoid an absurd result.<sup>127</sup>

Contrasting with Mr. Richter's testimony, Staff takes the position that there is nothing in the law to indicate that the sale of DG RECs is meant to be an incentive under the law, and that using DG RECs for VGP or RPS compliance reduces the renewable

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<sup>122</sup> Staff brief, 9-12.

<sup>123</sup> Staff brief, 11-12.

<sup>124</sup> Staff brief, 12-13.

<sup>125</sup> Staff brief, 13.

<sup>126</sup> Staff brief, 13-14.

<sup>127</sup> Staff brief, 13.

generation required. This is the opposite of MCL 460.1001(2)'s stated legislative intent.<sup>128</sup> And, in further response to Mr. Albers' testimony, Staff believes it is incorrect to state that DTE should use inverters' records of production to determine the DG RECs produced, including production consumed onsite. Staff takes the position that DG should be treated the same as other RECs where only RECs that are not consumed on site are counted as salable, and anything else results in clear double counting of RECs.<sup>129</sup> Finally, Staff contends that Mr. Albers' testimony regarding the transmission and distribution benefits to solar DG are only applicable in locations where the distribution would have otherwise needed upgrades due to load growth. Staff's brief implies that this is speculative, and therefore not compelling.<sup>130</sup>

Staff's brief further takes the position that, if the Commission does not find the purchase of DG RECs to be double counting, the sale of DG RECs to DTE should still be at the Company's discretion.<sup>131</sup> Additionally, if the sale of DG RECs is not found to constitute double counting, Staff also takes the position that the purchases should be limited to outflow exceeding the customer's inflow over the prior year "to ensure that the customer's usage is completely covered by the renewable attributes of the DG system."<sup>132</sup> Staff continues to have concerns that the purchase of DG RECs would reduce the amount of renewable generation, but concedes that DG RECs could be used to address the VGP

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<sup>128</sup> Staff brief, 14.

<sup>129</sup> Staff brief, 14-15.

<sup>130</sup> Staff brief, 15-16.

<sup>131</sup> Staff brief, 15-16.

<sup>132</sup> Staff brief, 20.

waiting list while resources are being built. If that is to be done, then DTE itself would be the “best entity to manage” the purchases to address such needs.<sup>133</sup>

Nevertheless, Staff, in its brief, maintains that the “logical contextual review of the statute supports the idea that the DG RECs should be considered as if they were retired to cover the DG customer’s load.”<sup>134</sup> Staff notes that DG customers own any RECs generated on the customer’s site, where generation is limited to 110% of the customer’s prior year electricity consumption, and with generated electricity being used by the DG customer behind the meter or as outflow onto the Company’s system.<sup>135</sup> RECs represent only the renewable aspects or attributes of generation, and, once a REC is produced and sold the generation is no longer renewable, while “DG resources must be renewable by definition.”<sup>136</sup>

To harmonize the various aspects of the law, and to avoid an unreasonable result, Staff asserts that the legislature must have intended customer ownership of RECs to continue considering DG to also be renewable generation. To allow the Company, or any other entity, to purchase DG RECs would “undermine both the program itself and the clean and renewable standards.”<sup>137</sup> “[O]nly by assuming [the RECs’] retirement by the owner can the various portions of the law be read so as not to produce an unreasonable result.”<sup>138</sup> Staff also believes this comports with the limit that generation be only 110% of usage to avoid the need for DG production to be addressed under the clean and

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<sup>133</sup> Staff brief, 16-17.

<sup>134</sup> Staff brief, 17.

<sup>135</sup> Staff brief, 17-18.

<sup>136</sup> Staff brief, 18.

<sup>137</sup> Staff brief, 18-19.

<sup>138</sup> Staff brief, 19.

renewable standard.<sup>139</sup> And, for that reason, if RECs are purchasable, Staff takes the position that this should be limited to the DG customer's net outflow for the prior year.<sup>140</sup>

In its brief, DTE takes the position that it complied with the Commission's directives regarding holding an outreach session and including a proposal for the purchase of DG RECs that complies with Act 235.<sup>141</sup> In response to Mr. Albers, DTE asserts that the Commission only directed it to hold a single outreach session.<sup>142</sup> And, in relation to the session itself, the Company notes that Mr. Albers did not attend, Dr. Sherman did not present a proposal, and the only two proposals to come out of the June 20, 2024 outreach session were one from GLREA, and one joint presentation from MEIBC and 5 Lakes Energy, despite DTE reaching out to numerous interested parties regarding the meeting.<sup>143</sup> Furthermore, Mr. Jester for MEIBC did not believe that changes to the DG REC purchase proposal were needed to prevent double counting of RECs due to the exclusion of DG generation consumed at the site of generation from the RPS formula. This ultimately led to the Company resubmitting its DG REC purchase proposal.<sup>144</sup>

DTE's brief goes on to assert that the Commission should find that the Company complied with the directive to formulate and submit a new proposal for the purchase of DG RECs.<sup>145</sup> DTE outlines its proposal, noting that only Mr. Albers, testifying that REC purchases should be at the discretion of the customer and not the Company at a value of the five-year rolling average of MIGreenPower program net premiums, raised issues with

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<sup>139</sup> Staff brief, 19-20.

<sup>140</sup> Staff brief, 20.

<sup>141</sup> DTE brief, 25-27.

<sup>142</sup> DTE brief, 27.

<sup>143</sup> DTE brief, 26-27.

<sup>144</sup> DTE brief, 27-28.

<sup>145</sup> DTE brief, 28-30.

the proposal unrelated to compliance with Act 235.<sup>146</sup> The Company's brief contends that Mr. "Albers' recommendations should be rejected because the VGP program should reflect the market value of the renewable energy and RECs that comprise the program," with Staff having previously rejected a proposal identical to that Mr. Albers now advances, and with his proposal resulting in a subsidy across customer groups through higher prices.<sup>147</sup> DTE believes that its current proposal avoids double counting concerns while respecting Mr. Heidemann's testimony and Staff's modeling. In the Company's view, Staff's modeling "underscores the importance of the Company retaining the discretion to purchase RECs from DG customers" because only then can the purchases be made when the "Company determines that it will be beneficial to VGP customers."<sup>148</sup>

In its reply brief, MEIU asserts that Staff's argument regarding alleged double counting of DG RECs assumes facts that are not in evidence. MEIU contends that, in its brief, Staff for the first time "take the position that a hypothetical purchase of DG RECs by an electric utility constitutes unlawful double-counting under Public Act 295, as amended, and should not be allowed."<sup>149</sup> MEIU suggests that this position diverges from Staff's testimony and states that if Staff "intended to oppose the purchase of DG RECs under the misguided notion that doing so somehow resulted in double counting RECs, their testimony was the place and time to make that argument."<sup>150</sup> MEIU points to pages 14-15 of Staff's brief and argues that no witness testified to the facts recited and that the Commission should therefore disregard the argument.

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<sup>146</sup> DTE brief, 28-29.

<sup>147</sup> DTE brief, 29-30.

<sup>148</sup> *Id.*

<sup>149</sup> MEIU reply brief, 7.

<sup>150</sup> *Id.*

Additionally, MEIU asserts that Staff's interpretation of Public Act 235 is at odds with the text of the Act. It argues that Public Act 235 calls for a utility to achieve a renewable energy credit portfolio and that it does not state or require a certain level of overall renewable generation serving load in the State. MEIU argues that the statute "does not define the RPS in terms of overall proportions of renewable and non-renewable energy generated but rather in terms of RECs procured per MWh of sales as defined in the statute."<sup>151</sup> MEIU contends that Witness Heidemann's testimony shows that RPS requirements are independent of the overall proportion of renewable energy generated in the State, noting that self-service power can affect the overall proportion of renewable and non-renewable energy generated in the State, but is not subject to RPS requirements. Further, it argues "Staff make no attempt to explain the logic behind why witness Heidemann's equations allegedly show this double counting; they merely assert as much."<sup>152</sup>

Arguing further against Staff's assessment that RECs would be double-counted, MEIU contends that Staff is seeking to impose an independent requirement on the source of RECs. It further asserts that Staff's analogy between VGP RECs and DG RECs and its attempt to harmonize provisions of Public Act 235 is misplaced as the Commission clearly has statutory authority to find that VGP customers do not obtain title to RECs acquired through the VGP program. MEIU states, "Not only does the statute not exclude DG systems from those able to generate RECs, it clearly provides that those RECs belong to DG-system-owning customers in Section 179."<sup>153</sup> Arguing further, MEIU states:

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<sup>151</sup> MEIU reply brief, 10.

<sup>152</sup> MEIU reply brief, 11.

<sup>153</sup> MEIU reply brief, 13-14.

[T]he Commission must recognize that MCL 460.1179 establishes that DG rates are compensation just for energy and capacity and not for the renewable attributes of that energy. The Commission may therefore neither actually nor constructively assign ownership of RECs to utilities or to the state at large for RPS purposes by deeming them retired as it were by operation of law, as Staff urges.<sup>154</sup>

Additionally, MEIU contends DG RECs are treated differently under Public Act 235 than VGP RECs, and therefore Staff's argument regarding the treatment of DG RECs under Public Act 235 is at odds with the plain language of the Act.

MEIU also asserts that Staff's position regarding DG RECs leads to an unconstitutional taking. MEIU claims Staff's position is violative of both the US and Michigan constitutions. Responding to Staff's arguments that the Company should have discretion regarding the purchase of DG RECs, MEIU avers that Staff's position relies on the same "flawed" premises used to make its argument regarding double counting. MEIU contends that leaving those purchases to the discretion of DTE would result in no RECs being purchased and that requiring DTE to purchase RECs is consistent with one of the goals of Public Act 235.

In its reply brief, GLREA argues that DTE has not complied with the Commission's instructions in Case No. U-21172 regarding submitting a new proposal for the purchase of RECs as it re-submitted the same proposal from that case. Responding to Staff, GLREA states that although it does not challenge the calculations Staff performed, it disagrees with what the conclusions mean. GLREA disputes Staff's conclusion that the sale of RECs would lead to double counting stating, "Clearly, the use of a REC for VGP or for RPS compliance would count the REC once. But the subtraction of DG outflow from

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<sup>154</sup> MEIU reply brief, 15.  
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the Company's sales does not 'count' the REC in the same way as if it were used for compliance."<sup>155</sup> Additionally, GLREA argues that the Staff has only cited a portion of the statute and that examination of the statute in its entirety shows multiple objectives, not just the one noted by Staff.

GLREA also notes that Staff's brief, citing MCL 460.1179, recognizes that the DG customer owns the RECs they have generated. It states, "If the legislature had intended that RECs from DG outflow could not be sold, it could have simply struck out this provision in existing law. The legislature chose to leave the ownership of DG RECs with DG customers. Staff's interpretation of the law would leave DG customers with an asset that they cannot sell."<sup>156</sup> GLREA asserts that the language of the statute is clear and unambiguous and that an inherent right in property ownership is the right to use, sell, or convey the property right owned. As such, it contends that Staff's position would deprive DG customers of the right to sell their property, as owners of the DG RECs. Further, GLREA argues:

The Staff makes the convoluted argument that the unambiguous plain language of Section 179 can be ignored or eviscerated by asserting without authority that the implementation of Section 179 would somehow result in a double counting of RECs. At the same time, Staff does not point to the plain and unambiguous portion of any specific statute that would support its "double count" theory, or that would nullify Section 179.<sup>157</sup>

Additionally, GLREA recommends that the Commission require DTE to file a standard contract for the purchase of DG RECs, arguing that a standard contract or tariff regarding the sale and compensation of RECs would be the most fair and efficient method

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<sup>155</sup> GLREA reply brief, 6.

<sup>156</sup> GLREA reply brief, 10.

<sup>157</sup> *Id.*

of administering DG REC purchases. Further, GLREA asserts that DTE should be compelled to purchase RECs from DG customers. GLREA asserts that should the Commission not compel the purchase of RECs from any and all DG customers, it should compel such purchase when 1) the Company has put would-be VGP participants on a waiting list, or 2) the Company has filed for a waiver to delay compliance with the renewable energy standard as per MCL 460.1032.

In its reply brief, DTE reasserts it has complied with the Commission's directives regarding holding an outreach session on the issue of double-counting as directed in Case No. U-21172. DTE states that it agrees with Staff's position that any purchase of DG RECs should be at the Company's discretion but does not make an argument regarding if such purchases would amount to double-counting. Recommending that the Commission reject MEIU's proposal, DTE asserts that MEIU and GLREA's "arguments and recommendations should be rejected because they are based on a misunderstanding of a prior Commission order and would lead to cross-subsidization of the MIGreenPower program in violation of the Commission's guidelines for VGP programs."<sup>158</sup> DTE asserts that MEIU's interpretation of the Commission's November 18 Order in Case No. U-20836 is incorrect and a proper interpretation is that the Order precludes DG customers from being required to sell RECs at prices and conditions set by the Company, but that it does not remove DTE's discretion to purchase RECs from DG customers based on need.

In its reply brief, Staff responds to MEIU and states that its testimony disagrees with MEIU's proposal. Staff argues that both classes of eligible participants in the DG

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<sup>158</sup> DTE reply brief, 11.  
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program are listed by statute as renewable energy systems and states, “Therefore, participant generation in the DG program must be renewable in the eyes of the law. It follows that the DG outflow to a utility must be renewable.”<sup>159</sup> Staff further argues that if RECs were to be sold, the energy from the DG would no longer be renewable and therefore not eligible for the DG program. Additionally, Staff asserts that if this argument is rejected, “this crediting of outflow against utility sales would be immaterial because it would still mathematically result in double counting.”<sup>160</sup> Staff further responds to GLREA and argues the two scenarios mentioned in its brief still result in displacement of renewables and therefore equate to double-counting.

This PFD finds that DTE has complied with the Commission’s instructions in U-21172 regarding holding an outreach session to address the issue of double-counting the DG RECs. This PFD finds the arguments of MEIU regarding Staff’s conclusion pertaining to double-counting to be persuasive. MEIU notes that Staff’s testimony does not mention double-counting and that the issue is first broached in Staff’s brief. As such, MEIU asserts that Staff’s conclusion regarding double-counting arises from facts not in evidence. This PFD agrees. Though Staff provided thorough equations showing how it calculated the effects of RECs being purchased, the conclusion that the purchase of RECs would result in double-counting is a leap made in briefing that is not clearly explained or extrapolated from the testimony or other evidence presented. Therefore, this PFD recommends that the Commission find that the purchase of DG RECs by DTE would not result in double-counting as alleged by Staff.

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<sup>159</sup> Staff reply brief, 14.

<sup>160</sup> *Id.*

In as much as intervenors have raised arguments regarding takings in violation of the US constitution, it is well-settled that an administrative adjudicator does not have authority to decide constitutional issues.<sup>161</sup> Therefore, this PFD will not address arguments made alleging takings in violation of the constitution. However, this PFD finds GLREA's argument pertaining to property ownership to be well reasoned and persuasive; DG customers with no option to sell their RECs are left with property to which their ownership rights are limited. Regardless of constitutional claims this result is illogical and should therefore be avoided.

In the Commission's April 25, 2024 Order in Case No. U-21172, the Commission ordered DTE to hold an outreach session and "file in its next VGP case a new proposal for purchasing RECs from DG customers informed by this outreach with intervening parties."<sup>162</sup> It is clear that the proposal submitted by DTE in this matter is the same proposal that was previously submitted. Further, DTE contends that in Case No. U-20836 the Commission did not order that REC purchases from DG customers be at the option of the DG customer, but that the parameters of such purchases not be set by DTE. This PFD disagrees with DTE's interpretation of the Commission's November 18, 2022 Order in Case No. U-20836. The Order in pertinent part states as follows, "Finding the Staff's exceptions on this issue well-taken, the Commission adds that any purchase of RECs should be at the option of the DG customer, which DTE Electric should reflect in its

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<sup>161</sup> *Dation v Ford Motor Co*, 314 Mich 152 (1946); *Flanigan v Reo Motors, Inc*, 300 Mich 359 (1942); *Mackin v Detroit Timkin Axle Co*, 187 Mich 8 (1915).

<sup>162</sup> Case No. U-21171, April 25, 2024 Order, page 28.

proposal.”<sup>163</sup> This PFD therefore interprets this Commission order as directing DTE’s proposal to make the purchase of DG RECs at the option of the DG customer.

This PFD accordingly recommends the Commission direct DTE to file a *new* proposal for purchasing RECs from DG customers which calls for the purchase of RECs to be at the option of the DG customer. This PFD finds DTE’s arguments and the testimony of Mr. Cameron to be persuasive regarding the price for DG RECs particularly in relation to any prices aside from market price creating a higher cost to and subsidy of the VGP program by all customers. As such, MEIU’s proposal should be rejected and DTE’s new proposal should show market value to be paid for RECs. However, this PFD agrees with the arguments proffered by MEIU that the use of an appropriate inverter is a proper method for calculating the number of RECs generated. This PFD recommends that the purchase of DG RECs from customers be on a first-come first-serve basis, and that the costs for administration of the program should be covered by the participants who are selling the RECs to avoid any cross-subsidization of the program.

B. MIGreenPower Rider 17

DTE requested approval from the Commission to change the Company’s MIGreenPower program and the Rider 17 tariff “in order to improve the operations of the MIGreenPower program and expand the features and benefits of its products to address emerging and underserved customer needs.”<sup>164</sup>

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<sup>163</sup> Case No. U-20836, November 18, 2022 Order, page 445.

<sup>164</sup> 2 Tr 39.

Mr. Cameron testified that MIGreenPower, DTE's VGP program, complies with the requirements of Section 61 of PA 342, as ordered by the Commission in Case No. U-18349:

- (1) the program is cost-of-service based to avoid subsidization by non-participants; (2) the program terms, renewable energy technologies utilized, location of renewable energy sources, and costs and savings incurred by a customer is transparent and clearly explained; and (3) the program contains accurate price signals with clearly broken-down costs.<sup>165</sup>

According to Mr. Cameron, all customer classes can purchase renewable energy through Rider 17 as either contracted (enrolled for 2,500 MWh or more) or non-contracted (enrolled for less than 2,500 MWh) subscribers.<sup>166</sup> He stated that the most recent version of Rider 17, approved in Case No. U-21172, allows participating customers to enroll in either: (1) a volumetric option that allows subscribers to select how much renewable energy they want reflected in their electricity consumption each month (i.e., any percentage from 5% up to 100% in 5% increments); or (2) a fixed-price option, only available to customers enrolling less than 2,500 MWh per year, that allows customers to choose a fixed monthly payment that they want to be billed for renewable energy each month.<sup>167</sup> Additionally, he said, customers can procure RECs through the REC-only option, in certain situations.<sup>168</sup> He stated that under each customer option, with the exception of the REC only offering, Rider 17 requires that subscribers pay a levelized, cost-of-service-based subscription fee for each kilowatt hour of renewable energy purchased, and requires DTE to provide subscribers with an energy credit and a capacity

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<sup>165</sup> 2 Tr 43.

<sup>166</sup> 2 Tr 44, 48.

<sup>167</sup> 2 Tr 44.

<sup>168</sup> *Id.*

credit that are indexed to the value that the program's solar and wind parks provide to the wholesale energy and capacity markets.<sup>169</sup>

Mr. Cameron explained that the energy credit for non-contracted customers (those enrolling fewer than 2,500 MWh per year) is based on the average amount of energy generated from all of the subscribed renewable energy facilities in the most recent MISO Planning Year, as determined by MISO Real Time Locational Marginal Price (RT-LMP) at the Company's generation node for each solar and wind park.<sup>170</sup> Whereas the energy credit for contracted customers (those enrolling 2,500 MWh or more) is based on the monthly weighted average RT-LMP for the facilities' generation nodes.<sup>171</sup> The capacity credit for all customers is based on their respective subscription and the Effective Load Carrying Capability (ELCC) of the underlying solar and wind parks as well as the value of the Auction Clearing Price in the annual MISO Planning Resource Auction for the appropriate zone.<sup>172</sup>

Mr. Cameron asserted that Rider 17 needs revisions to accommodate the partial settlement in Case U-21172 where DTE agreed to price parity in the allocation of renewable energy generation and RECs between the Company's VGP program and its compliance with RPS requirements.<sup>173</sup> He testified that the Company is proposing to remove the net premium evaluation factor from Rider 17 and include specific price parity language as set forth in the partial settlement.<sup>174</sup> However, he said, the Company

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<sup>169</sup> *Id.*

<sup>170</sup> 2 Tr 44-45.

<sup>171</sup> 2 Tr 45.

<sup>172</sup> *Id.*

<sup>173</sup> 2 Tr 65-66.

<sup>174</sup> 2 Tr 67-68; Exhibit A-1.

proposes permitting customers who enrolled in the VGP Program prior to the Case No. U-21172 Partial Settlement Agreement to retain their previously agreed to evaluation structure and tranching method.<sup>175</sup>

Mr. Cameron stated that the Company is also proposing two changes to Rider 17's fixed price offering. First, the Company wants to limit oversubscriptions to the fixed-price option for subscribers purchasing less than 2,500 MWh per year of renewable energy.<sup>176</sup> The Company is proposing that the maximum quantity of energy and RECs that each subscriber can receive under the fixed-price product would be limited to no more than 100% of the subscriber's electric usage in each month.<sup>177</sup> Additionally, during any month when the Program's net premium becomes negative, all fixed-price product subscribers would automatically receive the value of renewable energy provided under a 100% subscription to the Program's flex product offering.<sup>178</sup> Second, the Company is proposing changes to Rider 17 that Mr. Cameron testified would clarify the subscription renewal process. The proposed changes include stating that the Company and the customer will mutually renegotiate the terms of the contract to renew the subscription and ensure the contract is up to date with the current terms and structure of Rider 17.<sup>179</sup>

Staff witness Ms. Champion testified that Staff approves of DTE's proposed changes to Rider 17.<sup>180</sup>

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<sup>175</sup> 2 Tr 66-67.

<sup>176</sup> 2 Tr 68-70.

<sup>177</sup> 2 Tr 69.

<sup>178</sup> *Id.*

<sup>179</sup> 2 Tr 70-71.

<sup>180</sup> 2 Tr 346-348.

In his direct testimony, GLREA witness John Richter suggested two modifications to DTE's proposed Rider 17 changes, and he took issue with the Company's computation of the capacity credit for non-contracted customers. The capacity credit, he testified, is one of three components of the net premium rate. He explained:

The net premium rate has three parts. There is a subscription premium, which is a per kWh rate charged to the customer, over and above the rate for energy, capacity, and delivery from the customer's rate sheet. This subscription premium is computed from the cost of DTE's fleet of renewable energy facilities and their output expressed as a per kWh rate. Additionally, there are two per kWh credits that non-contracted VGP customers receive on their bill. There is a per kWh energy credit, which is computed from the renewable energy facilities energy output, valued at the real-time Locational Marginal Price (LMP) at the MISO auction. And there is a per kWh capacity credit, which is computed from the capacity provided by renewable energy facilities, valued at the MISO Planning Rate Auction (PRA) at the MISO auction, and adjusted to a per kWh rate. The capacity provided by the facility is the product of the nameplate capacity of the facility and the facility's "effective load carrying capacity" (ELCC).<sup>181</sup>

Mr. Richter asserted that Rider 17's capacity credit for non-contracted customers is incorrectly calculated because the Company multiplies the project size by the "zone ELCC" in which the project resides to compute the amount of capacity that a renewable energy facility provides.<sup>182</sup> He explained that MISO provides detailed instructions on calculating the ELCC used in its resource adequacy process and for existing intermittent generation with sufficient operating history, the ELCC is computed based on the actual operating history of the renewable energy facility.<sup>183</sup> According to MISO instructions a default ELCC should only be used for new facilities without generating history, he said.<sup>184</sup>

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<sup>181</sup> 2 Tr 313-314.

<sup>182</sup> 2 Tr 315-316.

<sup>183</sup> 2 Tr 317.

<sup>184</sup> *Id.*

Mr. Richter testified that the Company's use of the default ELCC means non-contracted customers end up being underpaid for the value of the capacity they provide.<sup>185</sup> And this, he maintained, is contrary to statute. He asserted that the governing statute of the VGP program (MCL 460.1061) states: "The customer is responsible for any additional costs incurred and *shall accrue any additional savings realized by the electric provider* as a result of the customer's participation in the program."<sup>186</sup> According to Mr. Richter, providing capacity for the MISO resource adequacy process is a "savings" realized by DTE as a result of owning the VGP renewable energy facilities and the statute requires this savings is passed on to the VGP customer.<sup>187</sup> He stated that this savings should be based on the actual ELCC of the renewable energy not a default ELCC.<sup>188</sup> DTE has to compute the actual ELCC of its renewable energy facilities for their participation in the MISO resource adequacy process and therefore it shouldn't be burdensome to compute it for the capacity credit calculation, he added.<sup>189</sup> Mr. Richter recommended that the Commission order the Company to compute the non-contracted VGP capacity credit for each in-service renewable energy facility using the same ELCC that the Company used in its most recent submission to the MISO resource adequacy process in the instant proceeding and in the Company's next VGP filing.<sup>190</sup>

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<sup>185</sup> 2 Tr 315.

<sup>186</sup> 2 Tr 318; MCL 460.1061.

<sup>187</sup> 2 Tr 319.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

Mr. Richter also proposed a new approach for the billing of VGP customers going forward, because the current method, he stated, “creates outcomes that contradict the statute and discriminates against smaller customers.”<sup>191</sup> He elaborated:

One of the benefits of renewable energy, when compared to energy from fossil fueled thermal plants, is that once a renewable facility is built, the generation costs are fairly well fixed. This is because most of the total cost is the construction cost; the operating cost is a small part of the total plant cost. This is in sharp contrast to fossil fueled thermal plants, which have highly variable operating costs, resulting from variations in the price of their fuel. Part of the appeal of the contracted VGP program for large customers is that customers can “lock in” their future utility power supply rate for the lifetime of the contract. This future inflation prevention is a very significant benefit, a kind of “savings” that should be passed on to all VGP customers, per the wording of the statute. Non-contract VGP customers are not getting this benefit.<sup>192</sup>

He added that the net premium that non-contracted VGP customers currently pay is highly volatile because the VGP credits are based on MISO auctions for energy and capacity.<sup>193</sup> For instance, he said, the premium for DTE’s non-contracted VGP program was recently negative (the program saved customers money), but in this proceeding, DTE has calculated a net premium of 2.4 cents per kWh.<sup>194</sup> This volatility in “green” pricing is not a function of green generation costs, which vary very little, he said. Rather, it is a function of MISO markets, which, in turn, are driven (at the margin) by the price of natural gas or coal.<sup>195</sup> He asserted that this price volatility is contrary to statute because under the statute, the customer, “shall accrue any additional savings realized by the electric provider as a result of the customer’s participation in the program.”<sup>196</sup> One of the savings

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<sup>191</sup> 2 Tr 320.

<sup>192</sup> *Id.*

<sup>193</sup> 2 Tr 321.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> 2 Tr 322; MCL 460.1061.

that VGP customers should benefit from, he said, is the price stability that green energy creates.<sup>197</sup>

Mr. Richter further explained that the current pricing mechanism is also discriminatory against small non-contracted customers because large customers participating in the contracted VGP programs get fixed prices for the lifetime of the contract, while small non-contracted customers do not.<sup>198</sup> Mr. Richter explained that even though non-contracted customers can leave the VGP program at any time, compared with contracted customers who face a penalty if they do so, a small customer leaving the program does not represent a significant load that would create problems.<sup>199</sup>

Furthermore, he asserted, an excess of capacity in DTE's VGP program does not appear to be a serious risk in the foreseeable future.<sup>200</sup> He explained that the Company appears more concerned about a shortage of RECS as evidenced by its attempt to create a waitlist for non-contracted customers and its discussion of "voluntary enrollment curtailments" of large customers.<sup>201</sup> And any excess capacity and/or RECs in the VGP program could be used by the Company to fulfill its obligations under PA 235, which significantly increased the amount of green energy the Company must provide to non-VGP customers.<sup>202</sup>

Mr. Richter described his vision of how a non-contract VGP program would work:

The utility would own and operate the renewable facilities. Customers would sign up for the program. The rate customers pay for energy and capacity ("power supply") would then be based on the per kWh LCOE of the

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<sup>197</sup> 2 Tr 322.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> 2 Tr 323.

<sup>202</sup> *Id.*

renewable energy facilities. This power supply charge would be computed in exactly the same way that the non-contracted VGP subscription premium is calculated today. Distribution charges would apply just as they do with any rate sheet. The utility would retire RECs corresponding to the volume of energy purchased by customers under these contracts. Non-contracted VGP customers would then have nearly fixed power supply rates, similar to contracted VGP customers. Their total bill would not vary based on MISO energy prices or fuel costs, which reflects the nature of renewable energy system costs.<sup>203</sup>

According to Mr. Richter, this approach gives customers a hedge against fuel price inflation, eliminates the current VGP discrimination against small customers, and offers simplicity and clarity.<sup>204</sup> Currently, he said clarity is lacking as customers he's talked with do not understand how their VGP credits are calculated and are suspicious that they are being taken advantage of in some way.<sup>205</sup> He explained that the customers don't know what "MISO LMP" or MISO PRA" are, nor do they understand why those arcane concepts are applied to their renewable energy purchases.<sup>206</sup> He explained that his proposed approach is simpler because the bill would have fewer components:

Current pricing structure:

- Energy (non-capacity) (from their rate sheet)
- + Energy (capacity) (from their rate sheet)
- + Delivery charges (from their rate sheet)
- + Subscription premium (RE system cost)
- Capacity credit (from the MISO PRA)
- Energy credit (LMP, from the MISO energy auctions)

Proposed pricing structure:

- Subscription premium (RE system cost)
- + Delivery charges (from their rate sheet)<sup>207</sup>

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<sup>203</sup> 2 Tr 323-324.

<sup>204</sup> 2 Tr 324.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> 2 Tr 324-325.

He asserted that under his proposal, DTE stops charging VGP customers their rate sheet power supply charges and stops crediting them for energy and capacity from the renewable energy facilities.<sup>208</sup> Mr. Richter opined that his proposal would not be a cross-subsidy because the VGP customers would be paying the full cost of the renewable energy system that is supplying their energy and paying the normal delivery charges that fund the distribution system.<sup>209</sup> However, he conceded, there may be a need for an additional “transmission costs” charge, since the Company’s VGP facilities are transmission-connected.<sup>210</sup> He acknowledged that his proposal would be a significant change affecting all Michigan regulated VGP programs and he concluded his testimony by recommending that the Commission direct Staff to establish a workgroup to discuss and evaluate various options for the structure of VGP pricing in the future, with the goal of making the pricing more accurately reflect renewable energy costs and to make the VGP pricing easier to understand.<sup>211</sup>

Mr. Richter testified that DTE’s proposal to modify the fixed-price VGP offering is flawed in that the proposal does not identify how much a customer will be charged for renewable energy when the net premium is either very small or negative. He stated:

Reading the wording of the proposed tariff sheet, by omission it appears that the Company intends to charge the customer the full amount of their fixed-price subscription. If that is the Company’s intent, it is excessive and discriminatory against fixed-price VGP participants; it also fails to follow the principle of cost causation.<sup>212</sup>

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<sup>208</sup> 2 Tr 325.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> 2 Tr 336.

Mr. Richter asserted that if the amount of renewable energy is capped by the same amount that would apply to a flex program participant, the VGP charge should likewise be capped at that same amount. He further stated, “when the net premium is negative, the flex customer gets a net credit; at those times, the fixed-price customer should receive an equivalent credit.”<sup>213</sup>

Mr. Richter also criticized the wording of the proposed change to the fixed-price option pertaining to periods of negative net premium. He recommended removing the sentence, “This program will be offered only during times of a positive net premium, large enough to support at least a \$0.25 monthly enrollment” and asserted that the language was self-contradictory. Mr. Richter recommended the Commission order the following revisions to DTE’s proposed changes to Rider 17:

- In any month that the fixed-price customer’s amount of renewable energy is limited to what they would receive under the flex program, the amount that the customer is charged for VGP should also be capped at the amount that they would be charged if they were in the flex program.
- The sentence, “This program will be offered only during times of a positive net premium, large enough to support at least a \$0.25 monthly enrollment.” should be removed.<sup>214</sup>

CEO witness Kenworthy echoed many of Mr. Richter’s concerns about Rider 17 bill credits. According to Mr. Kenworthy, basing the Rider 17 capacity credit on the MISO PRA and basing the energy credit on the MISO LMP, does not accurately reflect the actual value of the capacity and energy to the Company.<sup>215</sup> He explained that the MISO capacity auction is a short-term, residual market that does not capture the long-term value of

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<sup>213</sup> *Id.*

<sup>214</sup> 2 Tr 338.

<sup>215</sup> 2 Tr 298.

renewable energy assets because vertically integrated utilities meet the vast majority of their capacity obligations themselves and only participate in the MISO capacity market after meeting their own requirements.<sup>216</sup> Similarly, he said, basing the energy credit on market LMPs rather than a cost-of-service framework fails to account for the full system benefits renewable resources provide.<sup>217</sup> Mr. Kenworthy acknowledged that it is important to ensure that non-participating customers do not subsidize VGP participants, but maintained that the converse is also true, which is that participants in VGP programs should not be under-compensated for the value their resources provide to the system.<sup>218</sup>

Mr. Kenworthy, like Mr. Richter, pointed to the language in MCL 460.0161, stating that VGP customers “shall accrue any additional savings.”<sup>219</sup> Renewable energy assets, he said, are directly contributing to DTE’s ability to meet its MISO capacity obligations, and as such, they should be credited in a manner that reflects their actual value to the utility.<sup>220</sup>

Also, similar to Mr. Richter’s observation, Mr. Kenworthy testified that Rider 17’s current reliance on market-based capacity and energy credits is volatile and undervalues renewable energy. He recommended that the Commission consider requiring that all VGP programs use a cost-of-service-based crediting approach, similar to the Distributed Generation (DG) outflow credit.<sup>221</sup> He noted that the fundamental principle of cost-of-service ratemaking is that customers should pay only for the services they use and

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<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> 2 Tr 298-299.

<sup>221</sup> 2 Tr 299.

receive compensation based on the value they provide to the system.<sup>222</sup> He asserted that cost-of-service-based credits would ensure that the credit rate reflects the actual avoided costs of generation, capacity, and system benefits, rather than being subject to the volatility of wholesale market prices.<sup>223</sup> Further he said, this approach would bring greater consistency to the crediting mechanism, better align compensation with the value these assets provide, and ensure that VGP participants are neither subsidizing nor being subsidized by non-participants.<sup>224</sup> Mr. Kenworthy noted that the DG outflow credit is a cost-of-service-based tariff that is structured to ensure fair compensation without imposing additional costs on non-participants and this approach should be considered here.<sup>225</sup>

MEIU witness, Dr. Sherman, consistent with Mr. Richter and Mr. Kenworthy, also recommended changes to the current Rider 17 capacity and energy credits. First, she testified that Public Act 235 of 2023 exempts from the renewable energy standard “the amount of sales attributable to customers participating in an electric provider’s voluntary green pricing program under Section 61.”<sup>226</sup> It follows then, she said, that the cost of renewable energy required to meet the renewable energy standard on Rider 17 sales is avoided by virtue of the customer’s participation in the voluntary green pricing program. Thus, the Rider 17 credit should include the full avoided cost of renewable energy that would otherwise be required to comply with the renewable energy standard.<sup>227</sup> From now

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<sup>222</sup> 2 Tr 300.

<sup>223</sup> 2 Tr 299.

<sup>224</sup> *Id.*

<sup>225</sup> 2 Tr 300.

<sup>226</sup> 2 Tr 230.

<sup>227</sup> *Id.*

through 2029, that will be 15% of customer sales, and energy credits and capacity credits as currently conceived would then apply to the remaining 85% of the customer's Rider 17 purchases.<sup>228</sup> Since the Company is in this case implementing price parity between Rider 17 and resources used to meet the renewable energy standard, this would be most easily implemented by crediting 15% of Rider 17 sales at the same price used to establish the Rider 17 subscription charge.<sup>229</sup>

Secondly, Dr. Sherman recommended changing how the capacity credit is calculated by removing the use of the MISO auction clearing price from the calculation.<sup>230</sup> She explained that the MISO auction is an auction in residuals, with most market participants recovering the costs of capacity through cost-of-service rate making.<sup>231</sup> As a result, the capacity prices produced in the auction are almost always significantly below full cost recovery for capacity.<sup>232</sup> She quoted MISO's Independent Market Monitor, stating, "Overall, MISO's economic signals continue to be undermined by capacity market design issues...."<sup>233</sup> Therefore, Dr. Sherman concluded, it is inappropriate to value the capacity provided by Rider 17 resources based on the MISO auction.<sup>234</sup> Instead, she testified, an appropriate capacity credit would be based on the value of capacity provided by Rider 17 resources on the Company's cost of capacity as determined in the Company's most recently approved rate case.<sup>235</sup> Multiplying the ELCC by the most recently approved

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<sup>228</sup> 2 Tr 230-231.

<sup>229</sup> 2 Tr 231.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> 2 Tr 231-232.

<sup>235</sup> 2 Tr 232.

capacity charge of \$230.51 per MW-day (in Case No. U-21534) would yield the appropriate credit for capacity under Rider 17, adjusted as the capacity charge is updated with each rate case, she maintained.<sup>236</sup>

Mr. Cameron disagreed with the testimony provided by GLREA, the CEO, and MEIU regarding Rider 17 credits. He disputed Mr. Richter's contention that non-contracted customers are being discriminated against and maintained that all customers taking service under Rider 17 are subject to Power Supply and Delivery charges for all of their electric service, including renewable energy.<sup>237</sup> He asserted that DTE has developed options for non-contracted VGP customers to receive the benefits of price certainty. One of these options, he said, is the "fixed price offering" where the customer is able to choose a fixed subscription and can receive the "locked in" benefit as long as the subscriber chooses to.<sup>238</sup> Mr. Cameron also pointed to Case No. U-20713, where the Company agreed to merge the former Rider 17 program and the former Rider 19, or Large Customer Voluntary Green Pricing Program (LCVGP), into the combined Rider 17, so that customers on Rider 17 received the same pricing and crediting structure offered to Rider 19 customers.<sup>239</sup> Under the combined Rider 17, non-contracted customers receive a fixed energy and capacity credit for a 12-month period ensuring their net premium remains consistent throughout the year, he said.<sup>240</sup>

Mr. Cameron also testified that DTE opposes Mr. Richter's price structuring proposal. He asserted that the MIGreenPower program was designed to offer customers

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<sup>236</sup> *Id.*

<sup>237</sup> 2 Tr 101.

<sup>238</sup> *Id.*

<sup>239</sup> 2 Tr 102.

<sup>240</sup> *Id.*

an option to procure renewable energy beyond the Company's RPS by participating in a voluntary cost-based program where all the program's costs are borne by its participating customers.<sup>241</sup> MIGreenPower was not designed or intended to replace power supply charges on the customer's utility bill, he stated.<sup>242</sup> The method GLREA is recommending would improperly shift costs to non-subscribing participants, he maintained.<sup>243</sup>

As to the proposals offered by Mr. Kenworthy and Dr. Sherman, Mr. Cameron testified that they are for programs with different structures and statutory requirements that fall outside the VGP program. He reasserted that MIGreenPower is designed as a market-based program that is available to customers who desire to have a greater portion of their electric use attributed to renewable resources beyond what they already receive from the RPS.<sup>244</sup>

Mr. Cameron said Mr. Kenworthy's proposal to use DG outflow credits as the basis for MIGP credits is not reasonable.<sup>245</sup> He mentioned that the DG program has specific requirements for customer eligibility, such as sizing and its location on the customer's premise.<sup>246</sup> He contended that the Company's current market-based compensation structure is fair and reasonable because it reflects the true cost of clean energy production and ensures that subscribers receive a fair price for the renewables they are subscribed to.<sup>247</sup>

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<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> 2 Tr 103.

<sup>245</sup> 2 Tr 104.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

Mr. Cameron also disagreed with Dr. Sherman's proposal to use the capacity charge approved in the most recent rate case multiplied by ELCC to calculate the capacity credit under Rider 17.<sup>248</sup> He stated the most recently approved capacity charge of \$230.51 per MW-day (Case No. U-21534) is associated with the State Reliability Mechanism and represents the Company's overall portfolio of generation capacity cost.<sup>249</sup> Further he said, it is only charged to alternative energy suppliers that fail to demonstrate enough resources to ensure reliability for their customers four years out.<sup>250</sup> On the other hand, he asserted, the primary purpose of incremental generation from VGP projects is not to meet existing reliability needs, but rather to provide the option for customers to procure and help develop utility scale renewable energy.<sup>251</sup> He stated that the appropriate capacity value would be the MISO PRA as it provides the actual incremental capacity price.<sup>252</sup>

Mr. Frazier, on behalf of Soulardarity and We Want Green, Too, offered rebuttal testimony supporting MEIU's and the CEO's proposals to improve the Rider 17 credit, stating that he agreed that the current Rider 17 credit calculation undercompensates customers.<sup>253</sup> Specifically, Mr. Frazier agreed with Dr. Sherman that the Rider 17 credit should include the full avoided cost of renewable energy that would otherwise be required to comply with the renewable energy standard.<sup>254</sup> He also concurred with Dr. Sherman's recommendation to base the value of capacity provided by Rider 17 on DTE's capacity

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<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> 2 Tr 104-105.

<sup>252</sup> 2 Tr 105.

<sup>253</sup> 2 Tr 172-173.

<sup>254</sup> *Id.*

cost as approved in the most recent rate case, rather than the MISO auction clearing price.<sup>255</sup> He supported increasing the credit in line with MEIU and the CEO's recommendations.<sup>256</sup>

In its brief, the CEO urges the Commission to revisit the VGP credit rate "to better reflect the value that VGP resources deliver to DTE and to comply with the statutory requirement that "additional savings" accrue to the subscribing customer."<sup>257</sup> The CEO asserts that the current pricing structure does not accurately capture the value that VGP resources deliver to the Company and to the grid, and therefore undercompensates VGP customers, in violation of MCL 460.1061. The CEO reiterates the recommendations of Mr. Kenworthy and recommends that the Commission adopt a cost-of-service approach for assessing the proper credit rate for VGP customers, asserting that such an approach would avoid cross subsidies and reflect the true value of the VGP customers' contribution.<sup>258</sup>

The CEO also recommends the Commission adopt a cost-of-service approach, as is used in calculating the DG outflow credit. The CEO again rely on the testimony of Mr. Kenworthy and state, "The Commission should find this approach attractive because the Commission has already recognized that 'the DG outflow credit at power supply including transmission' is a cost-based approach."<sup>259</sup> The CEO further argue that DTE's response to this recommendation does not properly engage with the testimony offered and it rejects Mr. Cameron's contention that the VGP and DG programs should not be compared for

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<sup>255</sup> *Id.*

<sup>256</sup> 2 Tr 173.

<sup>257</sup> CEO brief, 2.

<sup>258</sup> CEO brief, 4.

<sup>259</sup> CEO brief, 5.

purposes of reviewing the cost-of-service approach. The CEO further state, “While the VGP program tracks the ‘true cost of clean energy production,’ it does not offer cost-based compensation. Instead, the ‘fair price’ DTE pays treats the clean energy output from VGP like a fringe, marginal resource that the Company does not rely on.”<sup>260</sup> The CEO assert that converting DTE’s market-based credit structure to a cost-of-service based compensation, the VGP program will be better aligned with statute by ensuring that “subscribers pay their fair share of costs, but also receive their fair share of benefits from VGP resources.”<sup>261</sup>

MEIU relies on the testimony of witness Sherman in arguing that DTE should be required to make changes to the energy and capacity credits provided for in Rider 17. MEIU asserts the current method employed under Rider 17 fails to properly account for the value of the renewable energy resources provided by VGP customers to DTE and to non-participating customers. It states, “Specifically, this method both fails to account for the value to the utility of offsetting the load against which it must acquire RECs under Section 28 of Public Act 295 and fails to account for the full capacity value to DTE of VGP projects.”<sup>262</sup>

Dr. Sherman noted that the calculation for RPS under MCL 460.1028 excludes VGP sales from the overall utility sales against which DTE must obtain renewable energy. MEIU argues that this “means that by paying for renewable energy projects through their subscription charges, VGP customers actually reduce the number of MWh of renewable energy DTE (and its non-participating customers) must acquire in order to comply with

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<sup>260</sup> CEO brief, 6.

<sup>261</sup> *Id.*

<sup>262</sup> MEIU brief, 6.

the RPS.”<sup>263</sup> MEIU contends that this amounts to “something of an avoided cost of renewable energy” and requests the Commission to adopt Dr. Serman’s proposed modifications to Rider 17.

Additionally, MEIU suggests the Commission should adopt the recommendation of Dr. Sherman and use DTE’s cost of capacity, as determined in rate cases, in valuing capacity for VGP purposes. MEIU argues that:

the current method of calculating the capacity credit, which values the capacity with reference to MISO’s prompt year planning resource auction (“PRA”) prices, undervalues capacity on account of a number of market design shortcomings and the fact that actual cost recovery for capacity resources is not, as a general matter in MISO, generally accomplished through the PRA but rather through cost-of-service ratemaking.<sup>264</sup>

Responding to DTE’s criticism of Dr. Sherman’s proposal, MEIU asserts that regardless of the primary purpose, VGP resources provide capacity, and that those units of capacity are just as valuable to DTE for meeting reliability needs as any other unit of capacity. Arguing further, MEIU states that valuing capacity for Rider 17 credit purposes by using the cost of capacity determined in a rate case “has the advantage of being analogous to the cost-of-service-based compensation provided to customers for outflow under the Company’s DG tariff, Rider 18.”<sup>265</sup> However it should be noted that the capacity charge as determined in each rate case can vary significantly from case to case.

MEIU contends that VGP resources contribute to capacity and provide cost savings to DTE. Arguing further, MEIU states, “These cost savings, just like the cost savings (including capacity cost savings) provided by DG outflow, exceed DTE’s marginal

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<sup>263</sup> *Id.*

<sup>264</sup> MEIU brief, 8.

<sup>265</sup> MEIU brief, 9.

capacity cost represented by the MISO seasonal PRA prices favored by DTE in this proceeding”<sup>266</sup> MEIU asserts that the Commission’s prior findings that DTE’s power supply costs for the generation provided by DG customers are cost of service based are analogous to the capacity provided by VGP customers in the instant matter.

In its brief, GLREA asserts that DTE is using the incorrect ELCC in computing the capacity credit for VGP customers and contends that the credit should be based on the savings the customers’ capacity is providing to DTE. Relying on the testimony of Mr. Richter pertaining to the use of the default ELCC in this computation, GLREA states, “For facilities with a sufficient operating history, the Company is being inconsistent in their selection of the ELCC to apply, using one method in their resource adequacy filing with MISO, and a different method when computing the capacity credit paid to VGP customers.”<sup>267</sup> GLREA therefore recommends that going forward, the Commission order DTE to calculate the VGP capacity credit for customers using the same ELCC used in DTE’s resource adequacy filing with MISO for each facility.

Arguing further, GLREA notes the testimony of witnesses Sherman and Kenworthy and states, “We agree with both witness Sherman and Kenworthy that the MISO capacity auction price does not reflect the savings that the Company realizes from the capacity provided by VGP generation facilities.”<sup>268</sup> GLREA avers that either of the capacity valuation methods suggested by either Dr. Sherman or Mr. Kenworthy would be preferable to continuing to use the MISO auction price for capacity. It states that the computation methods suggested do not redefine the pricing structure itself, rather seeks

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<sup>266</sup> MEIU brief, 9-10.

<sup>267</sup> GLREA brief, 3.

<sup>268</sup> GLREA brief, 4.

to alter how one or two of the credits are calculated. GLREA asserts, “It is an unjustified double standard to use Company costs when setting rates, but market prices when setting customer credits.”<sup>269</sup> Renewable generation facilities provide capacity to DTE and GLREA argues that this constitutes a savings realized by the company, therefore making a long-term capacity price an appropriate valuation of their capacity contribution, as opposed to the MISO PRA. Additionally, GLREA argues that the Commission should adopt the recommendation of Dr. Sherman to add a VGP credit for the reduction in the number of compliance RECs required, reflexive of Public Act 235 of 2023.

GLREA recommends the Commission create a workgroup to study the potential benefits of revising the VGP pricing structure. Arguing that participants in the VGP program are not seeing all of the savings being realized by the utility, GLREA states that it is not proposing that the Commission adopt the proposed restructuring of the pricing structure in the instant matter. Rather it states, “we recommended that the Commission would order the creation of a workgroup on the topic, which would give the Company ample opportunity to explain why they believe that our proposal would shift costs in the future, before any implementation. We stand by our recommendation.”<sup>270</sup>

In its brief, DTE argues that the Commission should approve its proposed change to Rider 17 for the fixed price offering. DTE relies on the testimony of Mr. Cameron in arguing that this change is necessary to avoid potential problems under the current structure. DTE asserts that the proposed change remedies “issues with the fixed-price program that may lead to the oversupply of renewable energy, which would impact both

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<sup>269</sup> GLREA brief, 5.

<sup>270</sup> GLREA brief, 10.

fixed-price and flex-product subscribers and the functioning of the MIGreenPower program.”<sup>271</sup> Responding to Mr. Richter’s recommended modifications to the proposal, DTE contends his modifications are unnecessary because the proposed tariff revision states that fixed-price customers will be enrolled in the flex program when the fixed-price program is not offered. DTE notes that no other intervenors objected to this proposal, and that Staff supports it.

DTE further argues that the VGP pricing structure does not need to be modified. DTE contends that the proposals offered by the intervenors are flawed because they are either incompatible with the MIGreenPower program’s basis as a cost-based program, or would lead to cross-subsidization of the program by non-participating DTE customers. First, DTE asserts that non-contracted customers are not discriminated against and points to the merger of Rider 17 and former Rider 19 which results in “non-contracted customers and contracted customers receive the same pricing and crediting structure and non-contracted customers receive a fixed energy and capacity credit for a 12-month period, which ensures that their net premium remains consistent throughout the year.”<sup>272</sup> Responding to Mr. Richter’s proposed pricing structure, DTE argues that his proposal is inconsistent with the Commission’s prior guidance that the VGP programs be cost of service based.

DTE also rejects the pricing structure proposals offered by witnesses Kenworthy and Sherman. DTE argues that “CEO witness Kenworthy’s proposal is not reasonable because the DG outflow credits are designed specifically for the DG program.”<sup>273</sup> Further,

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<sup>271</sup> DTE brief, 20.

<sup>272</sup> DTE brief, 22.

<sup>273</sup> DTE brief, 24.

DTE contends Dr. Sherman's recommendation regarding the capacity charge for VGP customers is misguided. DTE states, "Because the generation from VGP projects is used to provide energy to subscribers from renewable generation and allow them to have a role in the development of utility scale renewables and not to meet reliability needs, this method is inappropriate."<sup>274</sup>

In its reply brief, the CEO argues that DTE misconstrues the statute and that the current pricing structure violates the VGP statute's directive that all benefits from the program flow to the subscribers. The CEO asserts that DTE charges customers for VGP subscriptions using cost-based methodology but compensates them using market-based methodology and states, "This discrepancy flies in the face of the VGP statute and unfairly undercompensates subscribers for the value their subscribed-to resources deliver to the grid."<sup>275</sup> The CEO also disputes DTE's argument regarding the VGP program not being used to meet reliability needs and states, "the intent of the program matters little in comparison to the operation and resource value of the VGP resources and the statutory directive that customers receive the accrued savings tied to the program."<sup>276</sup>

MEIU, in its reply brief, argues that MCL 460.1061 does not make mention of a VGP program needing to be market-based. MEIU argues that both the Commission and MCL 460.1061 explicitly require such programs to be cost-of-service based. Therefore, MEIU asserts when the market price fails to adequately compensate VGP customers for the additional savings realized by the utility, "the Commission is legally required to adjust

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<sup>274</sup> *Id.*

<sup>275</sup> CEO reply brief, 3.

<sup>276</sup> *Id.*

the credits paid under the program.”<sup>277</sup> MEIU also rejects DTE’s contention that the credit structure for the DG program is not appropriate to apply to the VGP program. MEIU argues that despite the DG credits being specifically designed for that program, “that does not limit the usefulness or applicability of the DG credit construct (or the usefulness or applicability of similar credits based on similar principles) for other purposes, including for VGP programs.”<sup>278</sup> Further, MEIU disputes that modifying the current pricing structure would lead to cross-subsidization and argues that the current pricing structure “results in a subsidy running in the opposite direction, from participating customers to non-participating customers.”<sup>279</sup>

In its reply brief, GLREA states that after reading DTE’s brief, its proposal regarding its fixed price offering is more clear. With this clarity, GLREA agrees that DTE’s plan to temporality enroll customers in the flex program when the fixed price offering is not available may mitigate its stated concern. However, GLREA states that it is still concerned that customers may be confused by shifting from one program to another and asserts that its proposal is still superior. GLREA reiterates its position that the current pricing structure of the VGP program is not compliant with the statute and recommends the Commission adopt its proposal or alternatively, order a workgroup be created regarding pricing structure.

In its reply brief, Staff rejects MEIU’s suggestion that the capacity credit for VGP customers be based on the cost of capacity as determined in rate cases, which equates to the SRM capacity charge. Staff argues this approach is inappropriate first because

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<sup>277</sup> MEIU reply brief, 3.

<sup>278</sup> MEIU reply brief, 4.

<sup>279</sup> *Id.*

“customers do not pay the capacity charge per MW-day amount, but capacity rates (which are the allocated portion of the SRM capacity revenue requirement divided by the appropriate determinants).”<sup>280</sup> Additionally, Staff asserts that although capacity rates paid by customers are representative of the costs of capacity service for them, “the capacity revenue requirement underlying those rates includes many costs that have not been shown to represent the value of capacity to the Company by MEIU or any other party in the instant case.”<sup>281</sup> Staff points to the testimony of Mr. Cameron wherein he states that DTE’s capacity charge is based on the company’s overall portfolio of generation costs, which includes costs that have been shown to be inappropriate to include in the value of capacity for the company. Staff therefore contends that using the SRM capacity charge to determine VGP capacity credits would be violative of MCL 460.1061.

Further, Staff asserts that MEIU’s proposal regarding capacity credits relies on the presumption that DTE uses the capacity provided by the generation under the VGP program to serve other customers. Staff points to the testimony of Mr. Cameron where he stated that the primary purpose of the VGP is not to help the company meet reliability needs, but to offer an option for customers to assist in developing utility scale renewable energy.<sup>282</sup> Staff argues that Rider 17 customers are served by and pay for DTE’s “overall generation mix” just as the company’s other customers. Staff asserts:

In other words, the VGP program allows customers to pay to construct generation that would produce RECs to offset the non-renewable assets the Company would otherwise use. This would effectively render the VGP generation surplus, which was then assumed to be sold on the market, and the value that would have been attained thereby was used to offset the cost

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<sup>280</sup> Staff reply brief, 5.

<sup>281</sup> Staff reply brief, 5-6.

<sup>282</sup> Staff reply brief, 6.

of the VGP generation VGP customers were paying for, supporting continuation of the current construct for the purposes of the instant case.<sup>283</sup>

Staff disagrees with MEIU's assertion that the current method of computing VGP credits fails to fully account for the value provided to the utility. Staff states, "the VGP program exists to allow participants to cover some or all of their usage with RECs from generation that would not exist but for their participation in the VGP program."<sup>284</sup> Staff asserts that effectively paying VGP participants for the RECs or renewable energy generation DTE does not have to acquire would defeat the purpose of the program. Staff argues, "if all generation and load must be covered by RECs or renewable generation regardless of the existence of VGP programs, nothing is 'saved' by VGP participation and there is no value to the Company to be returned to VGP customers."<sup>285</sup> Responding further, Staff contends MEIU is not considering that the value of the generation is currently being returned to VGP customers under the current construct and that paying for the entire value of generation being displaced would effectively return that value twice, resulting in double-counting any value to DTE. Staff also argues that MEIU's proposal is flawed in that it does not account for the mismatch between the manner in which the costs of VGP resources are recovered compared to REP resources.

Responding further to GLREA, Staff asserts that it has not shown that the cost structure related to near-zero marginal cost generation built for VGP customers provides savings realized by DTE and that VGP customers do not have a greater or lesser price

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<sup>283</sup> Staff reply brief, 7-8.

<sup>284</sup> Staff reply brief, 8.

<sup>285</sup> Staff reply brief, 9.

risk than other customers. Staff responded to GLREA's suggestion that a workgroup be created to address VGP pricing structure stating:

VGP customers are not served directly and exclusively by the VGP generation, but rather the Company's total generation mix, as is every other customer, as discussed further elsewhere in this brief. For this reason, the proposal rests on a faulty assumption and its approval would actually move the VGP program away from cost causation.<sup>286</sup>

Staff also asserts that GLREA's proposal would result in cross-subsidization as the VGP customers would no longer be paying the costs of the generation they are being served by and those costs would be borne by other customers.

Staff additionally disagrees with the intervenors' position that the MISO capacity auction price does not reflect the savings DTE realizes from the capacity provided by VGP generation. In conclusion, Staff states:

while it may be appropriate to revisit the current VGP construct given that renewable energy additions are the extent of the Company's current generation plans, and/or if the Commission agrees that VGP assets are shown to be used to serve all of the Company's customers as part of its generation mix, as the only alternatives to the present practice of valuing VGP capacity on the record in the instant case is the inappropriate use of the SRM capacity charge, the current valuation should be continued for the purposes of the instant case.<sup>287</sup>

DTE, in its reply brief, restated its arguments pertaining to its fixed-price offering and contends that fixed-price tariff complies with all applicable laws and Commission orders and will improve the VGP program. Replying to the intervenors' arguments regarding the calculation of bill credits, DTE states, "The Commission should reject the intervenors' proposals as not meeting the burden of proof, lacking requisite support in the

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<sup>286</sup> Staff reply brief, 11.

<sup>287</sup> Staff reply brief, 12-13.

record, and being contrary to Michigan law and the Company's well-established, Commission-approved VGP program."<sup>288</sup> Regarding MEIU's assertion that the capacity credit should be determined based on the cost of capacity as determined in DTE's rate cases, DTE asserts that this suggestion would result in distortions to the VGP program because it is not designed to meet reliability needs. DTE states that this proposed capacity credit is not a cost all customers would otherwise have to pay, but "It is, instead, based on the capacity charge associated with the State Reliability Mechanism, which is only charged to alternative energy suppliers that fail to show enough capacity to ensure reliability for their customers four years out."<sup>289</sup>

DTE rejects the intervenors' suggestion that the current credit calculation does not pass all program savings on to the VGP customers. It argues MEIU, GLREA, and the CEO have not demonstrated savings that are not being passed to customers but are proposing to shift costs from participating to non-participating customers. DTE states, "Simply put, there are no 'savings' here despite the intervenors' assertions to the contrary. MEIU, GLREA, and CEO have not demonstrated that the Company is realizing additional revenue from the MIGreenPower program or is otherwise collecting for costs that are not being incurred."<sup>290</sup> DTE contends the Commission should reject the recommendations of the intervenors and find that the current credit structure is compliant with Section 61 as there are no savings that are not being passed onto participating customers.

In its application, DTE made several requests regarding Rider 17 that were not opposed by the parties. First, DTE asks the Commission to approve its VGP Program

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<sup>288</sup> DTE reply brief, 5 (citations omitted).

<sup>289</sup> DTE reply brief, 6.

<sup>290</sup> DTE reply brief, 7.

Report (Exhibit A-2). Second, DTE requests the Commission approve a modification to Rider 17 “to state that the Company and contracted subscribers that subscribe at least 2,500 MWhs per year from the MIGreenPower program will mutually renegotiate the terms of their contract to renew the subscription and ensure that their contract is up to date with the current terms and structure of Rider 17.”<sup>291</sup> Further, DTE requests the Commission approve a modification to Rider 17 to accurately reflect the new price parity allocation methodology as approved in the July 2, 2024 Order in Case No. U-21172. DTE describes the resultant changes from this modification as follows:

First, for customers that will retain the previous evaluation structure, the term “additional projects” and “current projects” within Rider 17 will be changed to “previous projects.” Second, to accommodate the forward-looking changes to the price parity allocation methodology, the Company proposes to modify Rider 17 such that “New Projects” would be characterized as projects approved in any REP case by the Commission after July 2, 2024.<sup>292</sup>

Additionally, DTE requested in its application that customers already enrolled in the VGP program prior to the partial settlement in Case No. U-21172 to retain their previous evaluation structure and tranching method. These requests were not opposed by any party. This PFD finds that the evidence of record supports the requests made by DTE and recommends that the Commission grant such.

This PFD recommends that the Commission approve DTE’s proposal to modify its fixed price offering. GLREA was the only intervenor to challenge this proposed modification and admitted in its reply brief that the ability to move between fixed price and flex price as described by DTE would alleviate some of its stated concerns, although

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<sup>291</sup> DTE brief, 16; Exhibit A-1.

<sup>292</sup> DTE brief, 17; Exhibit A-1.

maintaining that some customers may be confused by the switch. This PFD finds the arguments presented by DTE and Staff to be persuasive and that DTE has presented evidence showing that the requested modification is reasonable and prudent. Given GLREA's statements in its reply brief, this PFD finds that the Commission should approve the modification to the fixed price offering.

For the purposes of the instant matter, this PFD recommends that the Commission allow the current VGP pricing structure to remain unchanged. However, this PFD finds that the concerns expressed by GLREA, the CEO, and MEIU, as supported by Soulardarity and We Want Green, Too regarding the credit and pricing structure of DTE's VGP Program are well-reasoned and should be further explored. Specifically, this PFD recommends that the Commission direct Staff to establish a workgroup to discuss and determine whether non-contracted VGP customers are receiving the full value of the capacity and energy they provide to DTE by way of their participation in DTE's VGP Program, MIGreenPower. The workgroup should discuss different VGP pricing and crediting options, including the current method as outlined in Rider 17, as well as those offered by GLREA, the CEO, and MEIU, and any other options and make a recommendation to the Commission on a VGP pricing structure that is consistent with statute, non-discriminatory, accurately reflects the full costs and benefits of VGP renewable energy facilities, and is easier for customers to understand.

C. Energy Storage Resources as Part of a Customer-Requested Offering

Dr. Sherman's testimony addressed that DTE is proposing to include co-located energy storage resources" as a Customer-Requested Offering (CRO).<sup>293</sup> Per Dr. Sherman, the Company is taking the position in its renewable energy plan case that co-located energy storage would meet the definition of a renewable energy system in MCL 460.1011(i) because it would charge from the renewable energy facility.<sup>294</sup> However, she noted that DTE responded to a discovery request in this case that whether the energy storage would charge from the renewable energy facility would be "customer specific."<sup>295</sup>

From this, Dr. Sherman disputed the Company's assumption that co-located storage is a renewable resource. Instead of charging from only the co-located energy facility, Dr. Sherman noted that standard energy arbitrage procedures would mean that lower demand charging at night was likely, and that this nighttime charging would likely come from the grid. Failure to charge from the grid would mean that the storage facility was not being operated to provide the greatest benefit to the grid or to the CRO customer.<sup>296</sup> However, because the Company's discovery response, found in Exhibit MEIU-3, indicated that storage procurement would follow the process outlined in the settlement agreements approved in Case Numbers U-20713 and U-21172, Dr. Sherman indicated that she was generally supportive of co-located storage development through build transfer agreements (BTAs) if the Commission permits the Company "to procure energy storage resources under the CRO."<sup>297</sup> Dr. Sherman concluded this portion of her

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<sup>293</sup> 2 Tr 226.

<sup>294</sup> 2 Tr 226-227, citing testimony in Case No. U-21662.

<sup>295</sup> 2 Tr 227, citing Exhibit MEIU-2.

<sup>296</sup> 2 Tr 226-227.

<sup>297</sup> 2 Tr 227-228.

testimony by indicating that the Company should also procure co-located third-party owned energy storage to fulfill CRO demand.<sup>298</sup>

Staff, too, had concerns regarding energy storage resources co-located with renewable facilities, and their inclusion as a renewable project under the VGP Program's Customer-Requested offering.<sup>299</sup> Ms. Champion testified that, while Staff did not believe co-located storage for CROs was unreasonable, Staff took issue with "non-participants paying for a non-renewable resource as the result of the levelized nature of the payment scheme and the non-levelized nature of actual expenses."<sup>300</sup> Because the program is currently only in the concept stage, Ms. Champion recommended on behalf of Staff that "this be re-evaluated if and when sufficient information can be provided regarding costs and participant payments."<sup>301</sup>

In rebuttal, Mr. Cameron testified that the Company is proposing "to provide co-located storage under a customer-requested special contract and not as part of any other VGP offering," so that the co-located storage "would be fully subscribed by the requesting customer."<sup>302</sup> He indicated Staff's "desire" to evaluate specific co-location designs could be done through the Commission's evaluation of the structure of individual special contracts provided for by the partial settlement in Case No. U-20713,<sup>303</sup> and would have to meet the additional Staff review requirements required by the Case No. U-21172 settlement agreement.<sup>304</sup> Mr. Cameron provided a possible program structure example,

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<sup>298</sup> 2 Tr 228.

<sup>299</sup> 2 Tr 349.

<sup>300</sup> 2 Tr 349.

<sup>301</sup> 2 Tr 349.

<sup>302</sup> 2 Tr 105.

<sup>303</sup> 2 Tr 106.

<sup>304</sup> 2 Tr 106.

where the credit back to the customer would be the value of the market benefits of the co-located storage resource, such as energy arbitrage and capacity value, but clarified that the actual program structure would be governed by the specific customer contract.<sup>305</sup>

Mr. Cameron testified that, at this time, the Company is seeking general regulatory approval to explore individual co-located storage CRO contracts.<sup>306</sup> He admitted that Dr. Sherman's concern, that co-located storage will need non-renewable charging to run at cheapest cost, had merit. However, he concluded that customers with co-located energy storage should "have the flexibility to determine the source of the charging energy for the co-located energy storage resource to which they are subscribing."<sup>307</sup>

MEIU, in its brief, continues to doubt whether a co-located storage resource would be charged solely from the renewable energy source, but posits that, if the Commission permits co-located storage as a renewable energy resource, then third party resources should be included.<sup>308</sup>

Staff's brief summarizes the testimony offered by Mr. Cameron, Ms. Champion, and Dr. Sherman, interpreting Dr. Sherman's testimony as being in favor of allowing co-located storage for CROs.<sup>309</sup> In light of Mr. Cameron's rebuttal testimony, however, Staff recommends that DTE "engage in discussions prior to allowing customers entering into" a CRO "to select energy storage resources co-located with renewable facilities."<sup>310</sup> Staff also recommends that the Company provide sufficient information to Staff including "how

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<sup>305</sup> 2 Tr 106-107.

<sup>306</sup> 2 Tr 107.

<sup>307</sup> 2 Tr 107.

<sup>308</sup> MEIU brief, 21-22.

<sup>309</sup> Staff brief, 7-8.

<sup>310</sup> Staff brief, 7-8.

the co-located storage is installed, sited, and/or charged differently than other storage that the Company does not consider co-located,” with particular consideration being given to interpreting Act 235 with its stated purpose “to maximize the use of renewable energy.”<sup>311</sup>

DTE’s brief maintains the Company’s request to include energy storage resources co-located with renewable facilities as part of the CROs included in the MIGreenPower program, with the program placing no restrictions on the types of renewable resources available to fulfill CROs.<sup>312</sup> DTE notes that, generally, solar parks have comprised the renewable resources for CRO contracts.<sup>313</sup> The Company characterizes Dr. Sherman’s concern for MEIU as being only that co-located storage will be sub-optimal if it must be charged solely from the co-located renewable energy generator, and that Staff’s concern is that non-participants will fund the storage projects for amounts exceeding subscription payments.

However, the Company’s brief takes the position that these concerns are addressed because the co-located storage would be fully and voluntarily funded by the CRO customer. In support, the brief repeats Mr. Cameron’s rebuttal testimony regarding CROs having unique objectives for each customer, requiring flexibility, and, most importantly, that this hurts no one because such resources would inherently be fully subscribed and paid for by the requesting customer.<sup>314</sup> DTE reiterates its request that co-located storage be permitted under the MIGreenPower CRO, contending that this will

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<sup>311</sup> Staff brief, 8.

<sup>312</sup> DTE brief, 42.

<sup>313</sup> DTE brief, 42-43.

<sup>314</sup> DTE brief, 43-44.

provide regulatory support to customers while providing customers with additional options for meeting renewable energy goals.<sup>315</sup> In its reply brief, DTE states it agrees with Staff that sufficient information must be provided and “believes that any concerns can be addressed once the Company begins negotiating a contract with a Customer-Requested Offering customer that includes co-located storage.”<sup>316</sup>

This PFD agrees with Staff in that co-located storage for CROs is not unreasonable, but that details pertaining to how this would be effectuated are scant. While both Staff and MEIU are generally supportive of the proposal, both offered legitimate concerns regarding how it would practically be put into place. This PFD recommends that the Commission allow DTE to explore individual co-located storage CRO contracts, but that more information be provided in accordance with Staff’s request.

D. Ownership Allocation of VGP Program Assets

In her testimony, Dr. Sherman had three recommendations regarding ownership of future VGP resources. First, Dr. Sherman recommended that the Company be required to procure the percentage of third-party owned VGP program resources set forth in the partial settlement agreement in Case No. U-21172.<sup>317</sup> Second, Dr. Sherman recommended that, due to the financial compensation mechanism (FCM) first introduced in 2016 PA 341, and updated by 2023 PA 235, the megawatts of renewable energy resources from power purchase agreements (PPAs) and Company-owned assets be

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<sup>315</sup> DTE brief, 44-45.

<sup>316</sup> DTE reply brief, 23.

<sup>317</sup> 2 Tr 225-226.

“roughly equivalent.”<sup>318</sup> Third, Dr. Sherman recommended that CROs not be exempt from third-party ownership percentage requirements.<sup>319</sup>

In relation to ownership of VGP program resources by third parties, Dr. Sherman testified that, under 2008 PA 295, utilities had been required to annually solicit through competitive bidding at least 50% of their proposed course of action (PCA) from power purchase agreements (PPAs) with unaffiliated third parties, with no more than 50% of the PCA being utility owned. This was known as the “50/50 split.” While the requirement was eliminated by 2016 PA 342, similar requirements subsequently arose in case settlement agreements.<sup>320</sup>

In relation to PPAs, Dr. Sherman testified that they were needed for proposals to be reasonable and prudent because the market influence of PPAs results in lower costs stemming from market forces counteracting monopoly prices and capital bias on the part of utilities.<sup>321</sup> She added that, while VGP plan customers are required to bear any additional costs incurred by their program participation, the Commission “has an obligation to ensure that future prices remain competitive for customers,” and that the lowest-cost projects should be used to fulfill VGP program customer demand.<sup>322</sup> Price parity in the partial settlement agreement in Case No. U-21172, where VGP program

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<sup>318</sup> 2 Tr 224-225.

<sup>319</sup> 2 Tr 225-226.

<sup>320</sup> 2 Tr 219-220, citing the June 7, 2019 order in Case No. U-20165, the June 23, 2022 order in Case No. U-21090, the July 18, 2019 order in Case No. U-18232, and the July 26, 2023 order in Case No. U-21193.

<sup>321</sup> 2 Tr 221-222, citing the July 18, 2019 order in Case No. U-18232, and the testimony of Meredith A. Hadala in Case No. U-20984.

<sup>322</sup> 2 Tr 221-222.

assets are no longer separate from assets fulfilling the Company's REP needs, also means that VGP program assets and costs now impact all ratepayers.<sup>323</sup>

Moving to CROs, Dr. Sherman recommended that these not be exempt from third-party ownership percentage requirements.<sup>324</sup> According to Dr. Sherman, CROs are special contracts brought before the Commission on an *ex parte* basis resulting from individualized competitive procurement processes with the end goal of developing specialized renewable projects, usually for large customers like Ford Motor Company and Stellantis.<sup>325</sup> The partial settlement agreement approved July 2, 2024 by the Commission in Case No. U-21172 also included a provision that RFP resources required for the VGP program would have the same ownership split as agreed to in Case No. U-21193, the Company's most recent IRP case.<sup>326</sup> Additionally, per Dr. Sherman, the Company separately agreed in the partial settlement agreement in Case No. U-21172 to a target of a minimum of 50% of required capacity from BTAs with unaffiliated parties "[s]pecifically for the CRO."<sup>327</sup>

Dr. Sherman also testified that the FCM, where utilities are paid for procuring resources through PPAs, could minimize the financial incentives for a utility to own all of its generating capacity facilities.<sup>328</sup> Public Act 235 of 2023 changed the existing 2016 PA 341 to include that any PPA entered into after June 30, 2024 will be subject to an FCM without Commission discretion calculated as the "product of contract payments multiplied

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<sup>323</sup> 2 Tr 222.

<sup>324</sup> 2 Tr 225-226.

<sup>325</sup> 2 Tr 222-223, citing Case No. U-20713 and the testimony of Knox Cameron in Case No. U-21375.

<sup>326</sup> 2 Tr 223.

<sup>327</sup> 2 Tr 223.

<sup>328</sup> 2 Tr 224.

by the utility's pre-tax weighted average cost of permanent capital"<sup>329</sup> Dr. Sherman opined that the increased value of the FCM under 2023 PA 235 "should make utilities like DTE Electric more agnostic as to ownership of VGP resources."<sup>330</sup> As a result, she believed that it was reasonable for the Company to seek approximately equivalent capacity from Company and third-party owned resources to fulfill VGP demand, including for the CRO.<sup>331</sup>

In Mr. Bilyeu's rebuttal testimony, the Company disagreed with Dr. Sherman's position on project ownership, asserting that the report Dr. Sherman referenced was from 2017 and outdated.<sup>332</sup> Instead, Mr. Bilyeu contended that DTE's 2023 Renewable Energy RFP demonstrated that company-owned projects were consistently more cost effective than PPAs.<sup>333</sup> Nevertheless, the Company still contracted PPAs in the 2023 renewable energy RFP, and the Company will continue to adhere to the ownership allocation requirements through 2030 as outlined in Case No. U-21193.<sup>334</sup> Mr. Bilyeu added, while the Company "requested 930 MW of VGP build" in its renewable energy plan, Case No. U-21662, there was no such request in this VGP case.<sup>335</sup> Mr. Bilyeu then referred to Mr. Cameron's testimony that the intent of this case is to provide a status update on the existing VGP program and provide the third biennial review of the VGP program, including updated policies and processes and areas for improvement.<sup>336</sup>

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<sup>329</sup> 2 Tr 224.

<sup>330</sup> 2 Tr 225.

<sup>331</sup> 2 Tr 225.

<sup>332</sup> 2 Tr 116-117.

<sup>333</sup> 2 Tr 117.

<sup>334</sup> 2 Tr 117-118.

<sup>335</sup> 2 Tr 117-118.

<sup>336</sup> 2 Tr 118.

In further rebuttal to Dr. Sherman's opinion that CROs should not be exempt from ownership splits, and that DTE should be required to procure third-party resources to meet CRO demands, Mr. Bilyeu testified that "CRO project ownership should be at the sole discretion of the contracting customer."<sup>337</sup> Mr. Bilyeu added that the partial settlement agreement in Case Nos. U-20713 and U-20851, to which MEIBC and IEI were parties, provided for a specialized competitive bidding process agreed to by the customer, incorporating customer-specific bidding guidelines, with the bidding process subject to MPSC Staff audit. Because CRO customers bear the entire cost of their projects, CRO contracts should not be subject to additional restrictions potentially creating cost increases. In Mr. Bilyeu's opinion, imposing additional restrictions would only complicate DTE's ability to contract with customers, stymying cost reductions for non-CRO customers.<sup>338</sup>

MEIU, in its brief, again advances the position that DTE previously agreed to procure at least half of the resources for CRO arrangements through BTAs, and that this commitment should be expanded to include PPAs.<sup>339</sup> Because CRO projects over a "certain minimum size" are to be the result of competitive solicitations, MEIU sees no issue with the developer retaining project ownership under a PPA once developed, rather than transferring ownership to DTE under a BTA.<sup>340</sup> Because both MEIU and DTE appear to agree that a CRO customer should have sole discretion over the CRO project, it should

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<sup>337</sup> 2 Tr 118-119.

<sup>338</sup> 2 Tr 119.

<sup>339</sup> MEIU brief, 20-21.

<sup>340</sup> MEIU brief, 21.

be the customer that should decide on ownership, and the Commission should direct DTE to include this option in its CRO program.<sup>341</sup>

Otherwise, MEIU's briefed arguments reflect Dr. Sherman's testimony, again asserting that "PPAs have tended to beat utility self-builds in cost terms."<sup>342</sup> The brief reiterates that third-parties must have not only the ability to bid, but to "have a realistic chance" that the bid will be accepted; without a reasonable chance of selection, there is no good reason for third parties to bid in the first place.<sup>343</sup> According to MEIU, Act 235's FCM will assist to overcome any bias on the utility's part, underscoring the reasonableness of third-party ownership.<sup>344</sup> MEIU's brief takes the position that third party ownership is supported by a prior agreement that at least 50% of CROs will be constructed through BTAs. MEIU questions DTE's contention that expanding CROs to include developer retention of project ownership subject to PPAs would be problematic, particularly if a PPA was the customer's preference.<sup>345</sup> Finally, MEIU continue to be skeptical that co-located battery storage should qualify as a renewable energy resource, discussed *infra*, but contend that, if the Commission finds that the co-located storage qualifies, it should also be subject to third-party procurement standards.<sup>346</sup>

In its reply brief, DTE asserts that it is in compliance with the ownership split for the CRO, as required under the partial settlement in Case No. U-21172. Additionally, DTE states that "the Commission should not implement ownership requirements and should

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<sup>341</sup> MEIU brief, 21.

<sup>342</sup> MEIU brief, 18-21.

<sup>343</sup> MEIU brief, 19-20.

<sup>344</sup> MEIU brief, 20.

<sup>345</sup> MEIU brief, 20-21.

<sup>346</sup> MEIU brief, 21-22.

reject MEIU's request."<sup>347</sup> DTE relies on the testimony of Witness Bilyeu, who opined that CRO project ownership should be solely up to the contacting customer, who should be able to contact with DTE for projects that meet their individual needs. DTE also argues that additional restrictions would make it more difficult to contract with CRO customers.

This PFD finds that the ownership allocation suggestions offered by MEIU should be rejected at this time. This PFD finds the testimony of Mr. Bilyeu to be persuasive that leaving project ownership to the discretion of the contracting customer is appropriate because the customer is contacting with DTE for a project that will meet that customer's individual needs. Additionally, as noted above, because the issue of energy storage resources as part of a CRO is only in its exploratory phase, it would be premature to address potential ownership allocation in this matter.

E. Competitive Bidding

Dr. Sherman testified that competitive bidding and Requests for Proposals (RFPs) are the best means of encouraging private investment in renewable energy, and for achieving the most cost-effective resource and ownership models.<sup>348</sup> She took the position that the Commission has endorsed a "fair, transparent, non-discriminatory bidding process," particularly in its September 9, 2021 order in Case No. U-20852, awarding a presumption of reasonableness to parties using the Commission's competitive procurement guidelines.<sup>349</sup> Dr. Sherman took note of the definitions of an Independent Monitor (IM) and an Independent Administrator (IA) set forth in Case No-U-20852's competitive procurement guidelines, acknowledging that, under the guidelines, the

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<sup>347</sup> DTE reply brief, 25.

<sup>348</sup> 2 Tr 212-213.

<sup>349</sup> 2 Tr 214-215.

Company may use an IM, sometimes called an Independent Evaluator (IE). She further noted that the Company's practice of using an IM was approved as part of the settlements in the June 9, 2021 order in Case No. U-20713, and in the July 26, 2023 order in Case No. U-21193.<sup>350</sup>

Nevertheless, Dr. Sherman expressed concern that DTE uses an IE/IM instead of an IA, because only an IA scores bids and maintains bidder anonymity until the process is at the negotiation stage. She indicated that anonymous, independent scoring is particularly important to avoid actual bias, and to avoid the appearance of bias, where the Company or an affiliate is bidding on its own project.<sup>351</sup> Dr. Sherman testified that she has strongly encouraged DTE in the past to use an IA instead of an IE/IM, but the Company has never agreed to this. She recommended that the competitive procurement guidelines approved in Case No. U-20852 should be the normative standard for all future procurements. She further recommended that all future competitive procurements be required to use an IA, because DTE's "continued refusal to use an IA casts a shadow on procurement decisions that have a direct impact on benefits to shareholders and costs to rate payers" "given the Company's clear preference to own and build future resources."<sup>352</sup>

In rebuttal, Mr. Bilyeu testified that DTE's use of an independent monitor (IM) is appropriate based on the Commission's approved competitive bidding guidelines and settlement orders in multiple cases. While agreeing that IMs are different from IAs, Mr. Bilyeu indicated that Dr. Sherman's characterization of an IM's function was incorrect.<sup>353</sup>

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<sup>350</sup> 2 Tr 216-217.

<sup>351</sup> 2 Tr 217.

<sup>352</sup> 2 Tr 217.

<sup>353</sup> 2 Tr 113-116.

According to Mr. Bilyeu, IMs do not simply oversee the Request for Proposals (RFP) process. Instead, they review bids and processes, jointly evaluate and score bids along with the Company, jointly shortlist projects, provide a report to the Commission detailing the IM's role in the RFP process and the fairness and transparency of the process, and serve other active roles in a competitive procurement process.<sup>354</sup> Requiring use of an IA “would not provide any benefits that are not already provided by the IM.”<sup>355</sup> Mr. Bilyeu further testified that use of an IM complies with the IRP Settlement Agreement in Case No. U-21193, to which MEIU was a signatory, and that this compliance has led to a fair bidding process for reasonable and prudent contracts.<sup>356</sup>

Mr. Bilyeu added that reviewing competitive procurement guidelines is beyond the scope of a VGP proceeding.<sup>357</sup> Renewable resources are requested and approved through integrated resource plans (IRPs) or renewable energy plans (REPs); no additional renewable resource approval is requested in this case, and any evaluation of competitive procurement guidelines is best done in IRPs and REPs where long-term energy needs are comprehensively planned and assessed.<sup>358</sup> Mr. Bilyeu noted that DTE has opposed MEIU's past requests to use an IA instead of an IM, that the choice of using an IM instead of an IA was settled in the IRP Case No. U-21193, and the issue should not continue to be revisited. He further noted that the Commission recently rejected Dr. Sherman's comments on behalf of MEIBC and Advanced Energy United in Case No. U-21568, with the Commission indicating that it did not believe that the competitive

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<sup>354</sup> 2 Tr 114, citing the settlement agreement in Case No U-21193.

<sup>355</sup> 2 Tr 114.

<sup>356</sup> 2 Tr 114.

<sup>357</sup> 2 Tr 115-116.

<sup>358</sup> 2 Tr 115.

procurement guidelines, and the accompanying extensive collaborative case, should be reopened.<sup>359</sup>

MEIU's brief highlights that Dr. Sherman's testimony is based on "knowledge of industry best practices for competitive bidding" from both research and participation on the Commission's Competitive Procurement Workgroup, and it largely summarizes Dr. Sherman's testimony and its underlying bases.<sup>360</sup> It also stresses that many organizations have advocated for "the inclusion of independent power producers and properly structured competitive solicitation" to support low prices through competition.<sup>361</sup> MEIU then reiterates that the Commission, while not requiring compliance with its Competitive Bidding Guidelines, adopted in Case No. U-20852, have considered the guidelines "normative" when evaluating reasonableness and prudence, with MEIU stressing Dr. Sherman's testimony on the importance of an IA versus use of an IE or IM.<sup>362</sup> MEIU adds that, while Mr. Bilyeu raised "technical objections" to Dr. Sherman's characterization of IM involvement in the Company's RFP process, only an IA can "*displace* DTE in the scoring, evaluation and ranking of bids," with DTE remaining in control of selection processes if an IA is not used.<sup>363</sup> [*Emphasis in original.*]

MEIU renews Dr. Sherman's recommendation in its brief while acknowledging that the Company has not previously agreed to use an IA in its competitive bidding processes, nor has the Commission previously required that an IA be required for all future

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<sup>359</sup> 2 Tr 115-116 & 118.

<sup>360</sup> MEIU brief, 22-23.

<sup>361</sup> MEIU brief, 23.

<sup>362</sup> MEIU brief, 23-25.

<sup>363</sup> MEIU brief, 25-26.

competitive procurements.<sup>364</sup> MEIU's brief also notes that Mr. Bilyeu objects to this recommendation on behalf of the Company, asserting that the Company is not proposing new resource acquisition in this case, so the recommendation should not be raised in this forum, and further asserting that alterations to the Guidelines may only be revisited through a dedicated proceeding.<sup>365</sup> In contrast, MEIU takes the position that the Company will "conduct solicitations for resources to fulfill VGP needs," so that the suggestion is appropriately considered in this case.<sup>366</sup> Additionally, MEIU contends that preferring an IA would "simply [require] a stricter application of the requirements," and would not require a Guidelines change.<sup>367</sup>

In its reply brief, DTE asserts that MEIU's arguments pertaining to its procurement process are misplaced and irrelevant to the current proceeding. DTE contends that, "the Commission has repeatedly ruled on this issue in other cases, and the Company continues to comply with the Commission's directives."<sup>368</sup> DTE notes Mr. Bilyeu's rebuttal testimony wherein he stated that DTE uses an IM, approved by the Commission, in its RFP process and that the Commission declined to require an IA in Case No. U-21568. DTE further argues that this proceeding is not the proper forum to raise the issue of adjustments to the procurement process. DTE argues, "The Company's use of an IM in IRP-related RFPs was previously agreed to by the Company, Staff, MEIU, and other

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<sup>364</sup> MEIU brief, 25-26.

<sup>365</sup> MEIU brief, 26.

<sup>366</sup> MEIU brief, 26.

<sup>367</sup> MEIU brief, 26.

<sup>368</sup> DTE reply brief, 23.

intervenors in the IRP Settlement Agreement in Case No. U-21193, which was approved by the Commission on July 26, 2023.”<sup>369</sup>

This PFD agrees with the arguments made by DTE. DTE properly notes that renewable resources are requested and approved through an IRP, and that the settlement in DTE’s most recent IRP case, U-21193, specifically allows for the use of an IM. This PFD agrees that the instant matter is not the proper forum to address DTE’s procurement strategy as it is not seeking approval of the procurement of any new resources. Suggested changes to the company’s procurement process should be taken up when the company is requesting procurement of resources, such as in an IRP proceeding. As such, this PFD recommends the Commission reject the proposed changes to DTE’s competitive procurement process.

F. Low-Income Community Solar Pilots

Mr. Cameron testified that DTE has two low-income renewable energy programs, the Community Support Pilot and the Community Impact Pilot.<sup>370</sup> The Community Support Pilot was proposed in Case No. U-20713 following feedback submitted in relation to Case No. U-20561.<sup>371</sup> The Community Impact Low-Income Solar Pilot stems from the partial settlement in Case No. U-20713 and is geared towards raising funds from donors and grant providers to try to cover the construction of solar parks in low-income communities within the cities of Detroit, Highland Park, and River Rouge.<sup>372</sup> The program also provides some low-income DTE customers in those communities with no-cost subscriptions and

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<sup>369</sup> DTE reply brief, 24.

<sup>370</sup> 2 Tr 49.

<sup>371</sup> 2 Tr 51.

<sup>372</sup> 2 Tr 51-52.

with “energy and capacity credits from a newly-constructed solar park in their community.”<sup>373</sup>

In relation to the low-income community solar projects, generally, the “Company is proposing to change the additional benefits to each of the projects outlined in Section 10.4.7.2-10.4.7.4 of the Case No. U-20713 Partial Settlement Agreement.”<sup>374</sup>

1. Community Support Pilot

Mr. Cameron testified that the Community Support Pilot accepts voluntary contributions that pay for two-year market-rate MIGreenPower subscriptions for qualifying DTE residential customers at or below 200% of the Federal Poverty Level (FPL), with new participants selected randomly on a quarterly basis.<sup>375</sup> There are currently 18 income-qualified customers enrolled.<sup>376</sup> According to Mr. Cameron, “the Company is establishing a fiscal sponsorship with a non-profit fiduciary who can receive donations for the pilot and provide donors with tax deduction benefits.”<sup>377</sup> Corporate donors will be sought to fund the program once the fiduciary is in place, and there is already a corporate donor pledge of \$20,000. The Company also anticipates applying for the State of Michigan’s Solar for All grant funding, on top of the \$36,986 in donations the pilot has received since August 2022.<sup>378</sup>

Mr. Cameron indicated that donations are tracked from on-bill monthly contributions from DTE customers, and from one-time contributions made via DTE’s

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<sup>373</sup> 2 Tr 53.

<sup>374</sup> 2 Tr 54.

<sup>375</sup> 2 Tr 49-50.

<sup>376</sup> 2 Tr 51.

<sup>377</sup> 2 Tr 50.

<sup>378</sup> 2 Tr 50-51.

MIGreenPower website. Both avenues of contribution are monitored by internal reports and reconciled against the general ledger on a monthly basis.<sup>379</sup> Funds are used as available to enroll customers in the pilot.<sup>380</sup> No other party provided testimony or argument directly related to the Community Support Pilot.

## 2. Community Impact Low-Income Solar Pilot

Mr. Cameron testified that DTE had met the requirements agreed to in the partial settlement in Case No. U-20713, namely, establishing the Low-Income Solar Council (LISC) with membership information and meeting minutes available on DTE's MIGreenPower Community Impact Pilot website.<sup>381</sup> He indicated that LISC meetings have been restructured since August 2023. According to Mr. Cameron, the Company has also identified multiple parcels of land that could be used for development of solar parks, submitted three grant applications to the MPSC Renewable Energy and Electric Infrastructure Enhancement and Development Grant to fund development and construction of the solar parks, and will submit an application to the Michigan Solar for All block grant program once this is available. He indicated that DTE also established "a fiscal sponsorship with a non-profit fiduciary organization that can apply for and receive grant funds that cannot be provided directly to a for-profit company."<sup>382</sup> According to Mr. Cameron, DTE has received \$31 in contributions, and the Company itself has committed to providing up to \$300,000 per project, a total of \$900,000 for the program.<sup>383</sup> He identified funding as the Community Impact Pilot's limiting factor and testified that "DTE

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<sup>379</sup> 2 Tr 51.

<sup>380</sup> 2 Tr 51.

<sup>381</sup> 2 Tr 52.

<sup>382</sup> 2 Tr 53.

<sup>383</sup> 2 Tr 53.

and the LISC have identified numerous siting locations,” but lacked the funds to move the solar park projects forward.<sup>384</sup>

Mr. Cameron testified that, to comply with the partial settlement agreement in Case No. U-20713, the Company will need to file a case within the first quarter of 2025 and propose “termination of the pilot, commencement of a low-income solar program, or continuation of the pilot on different terms.”<sup>385</sup> Mr. Cameron testified that the Company intended to recommend continuation of the program on different terms, but was waiting on the results of its grant applications.<sup>386</sup>

Mr. Kenworthy agreed that the LISC was created out of a Memorandum of Understanding (MOU) entered into by several parties in connection with the partial settlement agreement in DTE’s 2020 VGP case, which also provided for the creation of a solar energy pilot program for low-income individuals in Detroit, River Rouge, and Highland Park.<sup>387</sup> He also agreed with Mr. Cameron that the program should continue, but expressed some concerns with DTE’s representations. According to Mr. Kenworthy, subject to the joint duties and methodology set forth in the MOU, the LISC is intended to advise DTE on siting three solar projects over three years. It consists of DTE representatives, an external subject matter expert, Staff, a non-profit organization, and a low-income individual from each of the three cities.<sup>388</sup> The LISC participates in the decision-making for the DTE MIGreenPower Community Impact program, assisting with identification of potential low-income community solar projects in the subject cities, and

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<sup>384</sup> 2 Tr 53-54.

<sup>385</sup> 2 Tr 54.

<sup>386</sup> 2 Tr 54-55.

<sup>387</sup> 2 Tr 300-301.

<sup>388</sup> 2 Tr 301.

working to create a model for a fiduciary to receive grant and philanthropic funds to support development.<sup>389</sup> The projects will ultimately be owned by DTE, but the fiduciary will manage the customer subscriptions.

However, according to Mr. Kenworthy, the pilot lacks a long-term funding strategy, it needs a structure that ensures lower energy costs to its low-income customers, and it needs regulatory guidance, as well as additional commitments from DTE and other interested parties, in order to scale the program beyond the pilot phase.<sup>390</sup> He recommended continuation of the Community Impact Pilot.<sup>391</sup>

Ms. Champion testified that Staff also recommends approval of the program. She echoed Mr. Cameron's testimony that the Company had requested \$2,856,000 in its MPSC Renewable Energy and Electrification Infrastructure Enhancement and Development grant application to fund the project.<sup>392</sup>

In the Partial Settlement Agreement in Case No. U-20713, DTE agreed to "use reasonable efforts to construct and launch three" low-income solar pilot projects,<sup>393</sup> one in Detroit, one in River Rouge, and one in Highland Park, with a capacity of 250 kW per project, and to establish a Low-Income Solar Council (LISC) to facilitate community involvement in the development and operation of the projects.<sup>394</sup> The projects were to commence commercial operation during 2022 to 2024, with a target of one project per

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<sup>389</sup> 2 Tr 301-302.

<sup>390</sup> 2 Tr 303-304.

<sup>391</sup> 2 Tr 304-305.

<sup>392</sup> 2 Tr 348-349.

<sup>393</sup> The April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶ 10, referred to this program as the Low-Income Solar Pilot, but it is now known as the Community Impact pilot. Application, ¶ 18; 2 Tr 49.

<sup>394</sup> 2 Tr 149, 185; June 9, 2021 order in Case No. U-20713, p. 53; April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶¶ 10, 10.1, 10.2, 10.4.1, 10.4.2, and 10.4.3; April 14, 2021 Memorandum of Understanding in Case No. U-20713.

year.<sup>395</sup> However, this commitment depended on “the availability of suitable projects that [met] minimum requirements.”<sup>396</sup> DTE agreed to provide 30% of the upfront capital funding, up to \$300,000 per project or \$900,000 in total, with other funding to come from direct donations, grants, or other external fundings sources.<sup>397</sup> Once operational, the projects would provide selected low-income customers in the three communities with cost-free subscriptions.<sup>398</sup>

DTE also agreed to provide bill credits to low-income participants in the projects, calculated based on the LMP and PRA, reflecting the same general terms as the Rider 17/Rider 19 credit mechanism. DTE estimated this would result in a monthly bill credit of \$25 to \$30 per participant.<sup>399</sup> In addition, while no additional benefit is required for the first project, DTE is required to provide additional benefits for the second and third projects.<sup>400</sup> For the second project, DTE must “provide a free energy assessment and an additional monthly participation benefit (to be funded by donation dollars).”<sup>401</sup> For the third project, DTE must provide “a free energy data device and require participants to install the free DTE Insight App”, as well as provide an additional monthly participation benefit.<sup>402</sup>

Mr. Cameron testified that DTE has met all requirements for the Community Impact pilot required under the Partial Settlement agreement, including establishing and selecting members for the LISC, which “continues to identify funding for the pilot.”<sup>403</sup> He

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<sup>395</sup> 2 Tr 149, 185; April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶ 10.1.

<sup>396</sup> April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶ 10.1.

<sup>397</sup> 2 Tr 149, 187; April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶¶ 10.4.4.1, 10.4.4.2, and 10.4.4.3.

<sup>398</sup> 2 Tr 52.

<sup>399</sup> 2 Tr 149-150; April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶ 10.4.7.1.

<sup>400</sup> 2 Tr 54; April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶¶ 10.4.7.2 to 10.4.7.4.

<sup>401</sup> 2 Tr 54; April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶ 10.4.7.3.

<sup>402</sup> 2 Tr 54; April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶ 10.4.7.4.

<sup>403</sup> 2 Tr 52.

described the progress of the development of the solar parks and indicated that DTE “has identified multiple parcels of land that could potentially be used to develop the required solar parks.”<sup>404</sup> He explained that DTE submitted three applications for Renewable Energy and Electric Infrastructure Enhancement and Development (RE-EIED) grants, one for each project, “to fund the engineering, procurement, and construction of those solar parks” and will apply for a grant under the Michigan Solar for All program once available.<sup>405</sup> He also noted that DTE has “established a fiscal sponsorship with a non-profit fiduciary organization that can apply for and receive grant funds that cannot be provided directly to a for-profit company,” such as DTE.<sup>406</sup> However, Mr. Cameron acknowledged that there are obstacles preventing the development of the solar parks with the major obstacle being funding.<sup>407</sup>

Mr. Cameron stated that DTE recommends the Community Impact Solar Pilot be continued but proposes that certain terms be changed from those reflected in the Partial Settlement Agreement. Specifically, DTE proposes “that all pilots receive the same additional benefits of a free energy assessment and an additional monthly participation benefit to be funded by donation dollars.”<sup>408</sup> Ms. Champion testified that “Staff recommends the Commission approve this program” with the different terms proposed by the Company.<sup>409</sup>

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<sup>404</sup> 2 Tr 53.

<sup>405</sup> *Id.*

<sup>406</sup> *Id.*

<sup>407</sup> 2 Tr 53-54.

<sup>408</sup> 2 Tr 54-55.

<sup>409</sup> 2 Tr 346, 348-349.

CEO witness Kenworthy is Vote Solar’s designated representative on the LISC. He testified that “[o]ver the past year, the Community Impact Pilot has seen meaningful progress that has improved the structure and viability of the program.”<sup>410</sup> He noted that a fiduciary is now “in place to accept tax-deductible contributions to support the pilot,” which he described as a critical step that “allows not only potential corporate sponsors but also philanthropic organizations and public funding sources to contribute to the program in a way that aligns with their funding objectives.”<sup>411</sup> He explained that Vote Solar advocated for this approach because it creates a structure where contributions are managed independently from DTE for the benefit of low-income customers, which allows external donors view their contributions as directly benefitting low-income customers instead of subsidizing DTE’s solar infrastructure. He described this development as “a turning point in making the pilot more financially sustainable and scalable.”<sup>412</sup> He recognized that challenges remain, such as securing long-term funding, ensuring that the program delivers noticeable bill savings to participating customers, and scaling the program beyond the pilot. However, he recommends continuation of the program, noting the following:

While the initial phase of the program was slow to develop, the progress made in the last year—including the establishment of a fiduciary to facilitate external funding—demonstrates that the program is moving in the right direction. By securing a financial structure that allows philanthropic, corporate, and public-sector contributions to directly fund subscriptions for low-income households, the program is more attractive to external funders and better aligned with the mission of expanding clean energy access equitably.<sup>413</sup>

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<sup>410</sup> 2 Tr 302.

<sup>411</sup> *Id.*

<sup>412</sup> 2 Tr 302-303.

<sup>413</sup> 2 Tr 303-304.

Mr. Shannon, who is the Highland Park representative on the LISC, testified on behalf of the DAAO regarding his experience with the council. According to Mr. Shannon, DTE has taken “minimal steps” to complete the three projects and often “treats the LISC simply like a symbolic gesture.”<sup>414</sup> He pointed out that the first project was to be built in 2022 and all three projects completed by 2024, but that “near-zero progress” has occurred as no grants have been obtained and no sites have been selected.<sup>415</sup>

Mr. Shannon stated that neither the Partial Settlement Agreement nor the related MOU required DTE to have a non-profit fiduciary to build the projects, but that DTE indicated that a non-profit fiduciary is needed to acquire land parcels and obtain grant funding.<sup>416</sup> Mr. Shannon noted that DTE first mentioned the need for a non-profit fiduciary in February 2022 and ultimately selected Canton Community Foundation for all three projects, with whom he believes DTE has additional contracts. However, he testified that “[t]he LISC was largely removed from the negotiations,” other than receiving “ cursory updates.”<sup>417</sup> Mr. Shannon acknowledged the LISC received a copy of the draft contract on December 3, 2024, but alleged that DTE executed the contract before the council had an opportunity to discuss it in complete disregard of “the Council’s input or essential role in the process.”<sup>418</sup> Mr. Shannon also noted that the \$25,000 expense DTE incurred to hire outside counsel to arrange the fiduciary relationship came out of the \$900,000 DTE committed to help fund the projects, meaning that additional money will be needed to fund the project. He argued that this violated the Partial Settlement Agreement, which required

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<sup>414</sup> 2 Tr 180-181.

<sup>415</sup> 2 Tr 181.

<sup>416</sup> 2 Tr 187-188. See Exhibits DAO-107, p. 1, and DAO-108, pp. 1-2.

<sup>417</sup> 2 Tr 188-189. See Exhibits DAO-109 to DAO-119.

<sup>418</sup> 2 Tr 190.

DTE's contribution to be "used to fund the engineering, procurement, and construction of a solar array."<sup>419</sup>

Regarding Mr. Cameron's assertion that "LISC continues to identify funding for the pilot," Mr. Shannon stated that "no actual funding has been identified outside of DTE's own contribution" and it is his understanding "that DTE and the fiduciary are principally responsible for soliciting funds."<sup>420</sup> Mr. Shannon disclosed that the Commission did not award DTE an RE-EIED grant<sup>421</sup> and primarily attributed this to DTE not providing enough information in the application, including information regarding sufficient community partnership and support, local economic impact and cost savings, and current funding sources.<sup>422</sup>

Mr. Shannon refuted Mr. Cameron's assertions that numerous siting locations have been identified and that the lack of funding is the major obstacle to the projects moving forward, noting that DTE "have not decided on a single site" or "even identified any feasible locations" in Highland Park.<sup>423</sup> Therefore, he maintained that siting is also an issue impeding progress.

Mr. Shannon indicated that the issue with finding a site in Highland Park is that "the city is only 2.9 square miles," which makes it difficult to find an area of land large enough to meet DTE's criteria.<sup>424</sup> Mr. Shannon raised this issue with DTE and suggested

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<sup>419</sup> 2 Tr 191; April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶ 10.4.4.1.

<sup>420</sup> 2 Tr 192.

<sup>421</sup> DTE learned that it had not been selected to receive an RE-EIED grant on October 9, 2024, after it filed the application in this case. DTE plans to apply for the second round of RE-EIED funding. Exhibit S-1.4.

<sup>422</sup> 2 Tr 193-194; Exhibit DAO-123, pp. 23-25.

<sup>423</sup> 2 Tr 194.

<sup>424</sup> *Id.*

rooftop solar panels as an alternative to ground-mounted solar panels. According to Mr. Shannon, DTE rejected his suggestion because “roof-mounted panels cost more and are harder to access.”<sup>425</sup> He alleged that DTE wants the City of Highland Park to give it land for free and that the city is not in a financial position where it can afford to give away land. He pointed out that, since June 18, 2021, DTE has owned a vacant three-acre plot of land where the pilot project could be sited, but DTE has not considered using this plot because it plans to use this land for a substation. Mr. Shannon argued that this “demonstrates that DTE is clearly capable of finding – and paying for – land when they genuinely want to.”<sup>426</sup>

Mr. Shannon also alleged that DTE does little to actively engage with, or to encourage the LISC to actively engage with, the three communities. He testified that DTE has not been responsive to his requests to attend community events in Highland Park, although he acknowledged DTE has accepted an invitation for this April. Mr. Shannon testified that he connected DTE with the Director of the Highland Park Community and Economic Development Department, Carlton Clyburn, but that DTE has excluded him from its discussions with Mr. Clyburn, which is counterproductive as evidenced by the fact the discussions have not resulted in any progress.<sup>427</sup>

Despite the issues with DTE that Mr. Shannon described, he emphasized that he believes the solar pilot is valuable for his community and wants the project to continue. His primary recommendation is that the Commission require DTE to agree to a timeline for project completion. He also suggested requiring DTE to contribute more funding,

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<sup>425</sup> 2 Tr 195. DTE’s discovery response indicated that DTE decided not to pursue rooftop solar because of difficulties in finding cost-effective buildings large enough to support the minimum size requirement and because this approach would serve less customers. Exhibit DAO-128.

<sup>426</sup> 2 Tr 196-197; Exhibits DAO-129 to DAO-135.

<sup>427</sup> 2 Tr 197-199.

including money to purchase land, if DTE “is not willing to consider alternatives such as rooftop solar or using land that it already owns.”<sup>428</sup>

DAAO witness Frazier disputed that DTE complied with the Partial Settlement Agreement and pointed out that DTE never began construction of these projects. He attributed this lack of progress to DTE’s failure to (1) “make reasonable efforts to identify project sites,” (2) “secure adequate external funding,” and (3) “identify any tax credits or incentives for which it believes the Community Impact Pilot is or may be eligible.”<sup>429</sup> Regarding project siting, he noted that DTE has identified only two potential solar park locations, one in Detroit and one in River Rouge, and has a proposed location only in Detroit. Mr. Frazier contended that “[t]he fact that there has only been one proposed project location across three years of work on this pilot suggests that DTE has not made reasonable efforts to identify sites to construct and launch its three projects.”<sup>430</sup>

Regarding funding, Mr. Frazier, like Mr. Shannon, noted that the Commission did not award DTE an RE-EIED grant, finding, among other deficiencies, that the proposals “did not demonstrate sufficient local economic impact and cost savings,” “sufficient community partnership and support,” or “sufficient end results to support renewable energy and electrification infrastructure for non-subscribers.”<sup>431</sup> He claimed that DTE has not identified any additional grant programs for which the Community Impact pilot might

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<sup>428</sup> 2 Tr 199-200. It appears this proposal would necessitate another million-dollar contribution from DTE. At the LISC’s November 19, 2024 meeting, DTE representative Chandler Kielbas stated that “he was very surprised with the market rate of land in Highland Park. Chandler, Juan [Shannon], and Will Kenworthy discussed how several pieces of land in Highland Park were at least a million dollars or more even for small parcels of only a couple acres.” Exhibit DAO-118, p. 3.

<sup>429</sup> 2 Tr 150-152.

<sup>430</sup> 2 Tr 150. See Exhibits DAO-31 and DAO-32.

<sup>431</sup> 2 Tr 151; Exhibit DAO-34, pp. 23-25.

qualify.<sup>432</sup> Mr. Frazier asserted that DTE's inability to obtain funding is because DTE "is unnecessarily proposing Community Impact Pilot projects that are too large in scale, making it difficult, or impossible, for them to secure adequate funding."<sup>433</sup> He noted that DTE's RE-EIED grant applications were based on a project capacity of 1 MW and cost of \$2,856,000, in excess of the \$1,000,000 project cost DTE originally estimated based on a 250 kW project size.<sup>434</sup>

Regarding tax credits and incentives, DTE responded in discovery that, "[a]t the time of the application, there was not enough project-specific information to accurately calculate the appropriate tax credit," and it "will select tax credits that achieve the optimal tax credits allowed based on their timing and other applicable factors and considerations."<sup>435</sup> However, Mr. Frazier described a number of tax credits potentially applicable to the Community Impact pilot and maintained that "[i]f DTE were to account for these and other potential credits that the Community Impact Pilot may be eligible for, the Company could identify a significant source of additional funding to help close the funding gap that is currently stopping DTE from moving forward with these projects."<sup>436</sup>

Mr. Frazier testified that, to address DTE's failure to complete these projects, the DAAO recommend that the Commission order DTE to complete the projects, targeting one project per year, with at least one project to be completed by DTE's next VGP proceeding or, if not completed, an explanation provided as to the efforts taken and the

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<sup>432</sup> 2 Tr 151; Exhibit DAO-35.

<sup>433</sup> 2 Tr 150-151.

<sup>434</sup> 2 Tr 151; Exhibit DAO-30.

<sup>435</sup> Exhibit DAO-37. See 2 Tr 151-152.

<sup>436</sup> 2 Tr 152.

reasons for the failure. The DAAO also recommend the Commission direct DTE to prioritize effective engagement with the LISC and community stakeholders.<sup>437</sup>

On rebuttal, Mr. Cameron questioned Mr. Shannon's role and credibility as witness, noting that while he is testifying as to his experience as the Highland Park representative on the LISC, the council and City of Highland Park are not parties to this proceeding and he is a paid witness of the DAAO, although he does not represent the DAAO on the LISC.<sup>438</sup> Mr. Cameron testified that when the DAAO retained Mr. Shannon as an expert witness on December 1, 2024 at a rate of \$200 per hour, Mr. Shannon did not disclose this fact to the LISC.<sup>439</sup> Mr. Cameron stated that Mr. Shannon's "choice to file testimony critical of the LISC on behalf of an intervenor in this case raises questions regarding his respective duties and obligations to the LISC and DAAO."<sup>440</sup>

In addition, Mr. Cameron stated that Mr. Shannon "has missed multiple consequential LISC meetings where votes were planned and delayed signing important documents, like the resolutions approved by the LISC that advance the Community Impact Pilot."<sup>441</sup> As an example, Mr. Cameron noted that Mr. Shannon missed the April 16, 2024 meeting and the council agreed to postpone its vote on Resolution 03-2024 until the May 21, 2024 meeting to provide Mr. Shannon with the opportunity to be involved. However, Mr. Shannon missed that meeting too and the vote was held without him.<sup>442</sup>

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<sup>437</sup> 2 Tr 153.

<sup>438</sup> 2 Tr 77-78, 83.

<sup>439</sup> 2 Tr 86; Exhibits A-24 and A-25.

<sup>440</sup> 2 Tr 86.

<sup>441</sup> 2 Tr 83.

<sup>442</sup> 2 Tr 83-84. See Exhibits A-17 and A-18.

Mr. Cameron pointed out that, in 2022 and 2023, Mr. Shannon suggested that Parker Village, LLC,<sup>443</sup> a business entity created and operated by Mr. Shannon, purchase land for the pilot project in Highland Park. In addition, at the July 18, 2023 LISC meeting, DTE and the council learned Mr. Shannon owns multiple properties in Highland Park, which DTE and the LISC viewed as a conflict of interest. On December 5, 2023, the LISC adopted Resolution 02-2023 to address this issue, which prohibits the council from taking any action that would result in developing solar projects on property owned by Mr. Shannon.<sup>444</sup>

Mr. Cameron objected to Mr. Shannon's implication that DTE does not take the pilot or the LISC seriously, noting that DTE has worked with the LISC to identify potential sites and pursue grants and remains committed to providing its share of upfront capital funding. He also noted that DTE has assisted the LISC in improving its meeting process by implementing Robert's Rules of Order, recording meetings, taking minutes, and creating a planned action registry for review at each meeting, which "changes have allowed the LISC to be a more effective board and a more active partner in the advancement of the Community Impact Pilot."<sup>445</sup>

Mr. Cameron disagreed with Mr. Shannon that lack of land, in addition to lack of funding, is a major issue and stressed that lack of funding is the primary issue. In

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<sup>443</sup> According to Mr. Shannon, he created Parker Village to provide citizens in Highland Park "with fresh, locally grown food distribution by operating a small-scale farmers market." 2 Tr 178. Since being created, Parker Village has "distributed food, water, and emergency essentials to Highland Park residents and partnered with non-profit organizations to help the community," including by "providing fresh vegetables to the SAY Detroit Family Health Clinic." *Id.* Parker Village now "operates a 43,000-square-foot, 200-garden-bed community farm at the former location of Thompson Elementary School" and there are plans to expand this space into a smart neighborhood that utilizes green technology. *Id.*

<sup>444</sup> 2 Tr 85; Exhibits A-22 and A-23.

<sup>445</sup> 2 Tr 79-80.

response to Mr. Shannon’s claim that DTE expects free land, Mr. Cameron explained that because purchasing land will diminish the available budget, DTE is exploring options to partner with businesses and local governments to identify and acquire underutilized land at a low cost or donation. However, he maintained that this approach is due diligence and not an expectation that the City of Highland Park will provide free land.<sup>446</sup>

With respect to Mr. Shannon’s criticisms of the non-profit fiduciary process, Mr. Cameron rejoined that Mr. Shannon “missed key LISC meetings in April and May of 2024 that discussed and approved the development of a fiscal sponsorship with a non-profit fiduciary.”<sup>447</sup> He pointed out that Mr. Shannon voted to approve LISC Resolution 03-2023, which authorized DTE to pay \$25,000 of its contribution for outside legal counsel to establish a non-profit fiduciary.<sup>448</sup> He also clarified that, while DTE and the DTE Energy Foundation have collaborated with Canton Community Foundation and other stakeholders on charitable efforts, DTE does not have existing contracts with Canton Community Foundation and Canton Community Foundation does not serve as a fiduciary for DTE for any other program.<sup>449</sup>

With respect to Mr. Shannon’s criticisms of the RE-EIED grant applications, Mr. Cameron disputed that there was a lack of information in the applications. He stated that, for each project, DTE listed sources of active funding as “N/A” since the Company does not have active funding and listed future funding sources as up to \$300,000 from the Company. In addition, he explained that DTE provided a letter of support from LISC as

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<sup>446</sup> 2 Tr 78-79.

<sup>447</sup> 2 Tr 80. See Exhibits A-12 and A-13.

<sup>448</sup> 2 Tr 80. See Exhibit A-14.

<sup>449</sup> 2 Tr 81.

evidence of community support and noted that “the Community Impact Pilot will provide bill savings to low-income residents subscribed to the project.”<sup>450</sup>

Mr. Cameron stated that DTE is opposed to Mr. Shannon’s recommendations that DTE commit more money to the projects and agree to a reasonable timeline. He contended that it would be unfair for the Commission to require DTE to contribute more money than agreed to in the Partial Settlement Agreement and that the DTE “will continue to work in good faith to obtain project funding.”<sup>451</sup> He opposed a set timeline because completion of the projects is dependent on factors outside of DTE’s direct control, such as obtaining funding.<sup>452</sup>

Mr. Cameron responded to Mr. Frazier’s criticisms of the company’s efforts by noting that DTE is “an engaged participant in the LISC.”<sup>453</sup> He asserted that the slow progress is attributable to “barriers outside of the Company’s control that have encumbered development of these projects, including the threshold need to establish a fiduciary to support donation management, the lack of suitable land for a project, and the lack of grantors and donors who want to support and finance the Community Impact Pilot and related projects.”<sup>454</sup> He explained that DTE has tried to address these barriers, including by establishing a partnership with a non-profit fiduciary, which will allow it to “accept funds from grantors and donors” and “pursue additional grant opportunities that would not otherwise be available to DTE as a for-profit entity.”<sup>455</sup> In addition, he stated

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<sup>450</sup> 2 Tr 82-83. See Exhibit A-15.

<sup>451</sup> 2 Tr 86-87.

<sup>452</sup> 2 Tr 87.

<sup>453</sup> 2 Tr 88.

<sup>454</sup> *Id.*

<sup>455</sup> *Id.*

that “the Company continues to actively work with the LISC to identify land opportunities to support the Community Impact Pilot.”<sup>456</sup>

Mr. Cameron disagreed with the DAAO’s proposal that DTE be required to complete one project by its next VGP proceeding as “unjustified and inconsistent with the Case No. U-20713 Partial Settlement Agreement.”<sup>457</sup> However, he agreed that DTE will provide a status update in its next VGP proceeding, including an explanation of the efforts taken to implement the Community Impact Pilot.<sup>458</sup>

In its brief, DTE argues that it has complied with the Commission’s directives and requests that continuation of the project be approved with the proposed changes. DTE asserts it has taken substantial steps to comply with the Partial Settlement Agreement regarding implementation of the pilot, and that it has used reasonable efforts to develop the projects in conjunction with the LISC. DTE argues it has established and selected members for the LISC and has continued working to identify funding for the pilot.

DTE relies on the testimony of Mr. Cameron in describing the progress made, but notes that “there have been several hurdles to building the projects that have slowed down their development” with funding being the main obstacle.<sup>459</sup> The brief, further notes that Staff witness Champion and CEO witness Kenworthy both support the continuation of the program under the proposed modified terms. Additionally, DTE points out that although DAAO witnesses Shannon and Frazier allege the company has not complied

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<sup>456</sup> 2 Tr 89.

<sup>457</sup> 2 Tr 88.

<sup>458</sup> *Id.*

<sup>459</sup> DTE brief, 32.

with the Partial Settlement Agreement, neither witness expressly opposed the continuation of the pilot on the modified terms.

Responding to Mr. Shannon's criticisms of the program, DTE contends that the Commission should disregard his criticisms and recommendations due to his role on the LISC and as a paid witness for the DAAO. DTE rejects the assertion that it treats its work with the LISC as a symbolic gesture and states that it "has worked closely and in good faith with the LISC to move the Community Impact Pilot forward."<sup>460</sup> DTE notes that it has made several changes to the LISC meeting structure in an effort to make the meetings more effective and contends that such efforts demonstrate its commitment to the LISC and moving the pilot forward.

DTE contends that the Commission should reject Mr. Shannon's recommendation to require it to commit to a concrete timeline for completion of the pilot's projects, arguing that establishing such a requirement is not justified. DTE argues that it will continue to comply with the Partial Settlement Agreement and use reasonable efforts to construct and launch suitable projects based on availability. DTE states, "Although significant progress has been made, the Commission should take into consideration that DTE's ability to complete projects under the Community Impact Pilot remains dependent upon several key factors outside of the Company's direct control, including obtaining sufficient funding."<sup>461</sup>

DTE further argues that the Commission should reject Mr. Shannon's contention that the projects under this pilot could be completed more efficiently if the Company were

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<sup>460</sup> DTE brief, 34.

<sup>461</sup> *Id.*

to commit more funding to them. DTE argues that it remains committed to providing the agreed-upon funding levels in the Partial Settlement Agreement and that it will continue to work with the LISC to secure outside funding for the projects. Arguing further, DTE states, “Requiring additional funding from the Company would almost certainly result in subsidizing program participants at the expense of non-participating customers, which would be contrary to the Commission’s approval criteria for VGP programs established in Case No. U-18349.”<sup>462</sup>

Responding to the testimony and recommendation of DAAO witness Frazier, DTE argues that it has taken reasonable efforts to obtain funding and land for the projects in Detroit, Highland Park, and River Rouge despite slow progress because of “significant barriers”.<sup>463</sup> DTE argues that the recommendation that DTE be required to complete one of the projects by its next VGP filing would not be justified under the terms of the Partial Settlement Agreement, as such calls for reasonable efforts to be undertaken by the company to advance the projects. DTE contends that it has made reasonable efforts to advance the projects and that the Commission should therefore reject witness Frazier’s recommendations.

In its brief, the CEO points to the testimony of witness Kenworthy, noting that Mr. Kenworthy is the non-profit representative on the LISC. The CEO notes Mr. Kenworthy’s continued support for the program and states that there has been a breakthrough within the last several months that shows “meaningful progress that has improved the structure and viability of the program.”<sup>464</sup> The CEO assert that despite its general optimism

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<sup>462</sup> DTE brief, 35.

<sup>463</sup> DTE brief, 36.

<sup>464</sup> CEO brief, 13.

regarding the current state of the program, there are still several challenges, namely funding. The CEO state, “Overall, Witness Kenworthy and the Clean Energy Organizations remain optimistic about the direction of the program” and recommend the Commission continue to support such.<sup>465</sup> The CEO did not address this issue further in its reply brief.

In its brief, the DAAO argue that DTE “has failed to put forth the reasonable efforts required by the settlement agreement—in identifying site locations, in acquiring funding, and in utilizing the LISC’s advisory power” which has resulted in the program remaining incomplete and delayed.<sup>466</sup> First, the DAAO assert DTE has failed to use reasonable efforts to identify sites in each of the three communities in question. DAAO avers DTE is experienced in acquiring funding, buying land, and building energy infrastructure required to complete the projects in the timeline listed in the Partial Settlement Agreement and that the term “reasonable efforts” should “be read to reflect both the efforts that would be expected from a company of DTE’s pedigree and those which would be necessary to generally launch the projects within the required time frame.”<sup>467</sup> The DAAO point to DTE’s purchase of a parcel of land in Highland Park on June 18, 2021 that DTE has reserved for a substation as evidence that DTE is able to procure sites for the project. The DAAO argue:

In other words, for nearly the entire time that the partial settlement has been in effect, DTE has been unable to find a suitable plot of land in Highland Park while simultaneously sitting on a suitable plot of land in Highland Park. DTE’s ability to find and buy land in June of 2021 demonstrates that it is capable of acquiring land when the Company prioritizes it appropriately. The comparable inability to do so in discharging these contractual duties

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<sup>465</sup> CEO brief, 14.

<sup>466</sup> DAAO brief, 14.

<sup>467</sup> DAAO brief, 15.

suggests that DTE simply refuses to put in comparable effort for the Community Impact pilot.<sup>468</sup>

The DAAO assert that DTE has not shown justification for the delays to the project beyond what should be expected from a party experienced in these matters as DTE is. Further, the DAAO argue that “DTE has refused to consider the full breadth of possible pilot projects despite a broader scope potentially accelerating development.”<sup>469</sup>

Second, the DAAO assert DTE has not made reasonable efforts to secure funding for the projects. The brief notes that DTE is to provide 30% of the upfront funding and raise the remainder from donors and grants, but that it has failed to secure any meaningful funding during the three years the project has existed. Arguing further, the DAAO contends DTE did not find a non-profit fiduciary in a timely manner. Although DTE signed an agreement with Canton Community Foundation to serve as the fiduciary, that agreement was not signed until sometime between December 3, 2024 and January 7, 2025. The DAAO asserts that DTE should have been aware of the need for a fiduciary and the availability of Canton Community Foundation to serve as such, and that the delay in finding a fiduciary “fall[s] squarely on the Company’s shoulders.”<sup>470</sup>

The DAAO additionally argue that DTE failed to use reasonable efforts to secure alternate sources of funding. The DAAO argue, “The Company failed to secure one grant, has not yet applied for any other grant, and has failed to identify tax incentives that could provide additional funding.”<sup>471</sup> Noting that the Company has only applied for one grant (the RE-EIED grant) during the three years since the Partial Settlement Agreement was

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<sup>468</sup> DAAO brief, 16.

<sup>469</sup> DAAO brief, 17.

<sup>470</sup> DAAO brief, 21.

<sup>471</sup> DAAO brief, 21 (citations omitted).

signed, the DAAO assert DTE's actions in that regard are unreasonable. The DAAO also note that the grant was denied by the Commission, and that several deficiencies with the application were noted by the grant evaluation team. The DAAO further argue that DTE's failure to consider tax credits as a source of funding shows it is not using reasonable efforts to secure such. The DAAO contend DTE is at least partially responsible for the lack of funding, arguing:

DTE admits that they have at least some level of control over the barriers of securing grants and a fiduciary, but highlights those same barriers as reasons for the delay that were outside of the Company's control. Simply put, addressing these obstacles was always in the Company's control. The Company's failure to surmount these barriers reflects that they were not using reasonable efforts to secure funding.<sup>472</sup>

Additionally, the DAAO aver that increasing the scale of the projects will only serve to delay them more, and states "The Company needs to retreat from this increased capacity goal if it cannot feasibly raise the additional funds or is unwilling to contribute the difference."<sup>473</sup>

Lastly, the DAAO argue DTE has not used reasonable efforts to engage with the LISC. The DAAO contend that "DTE has proceeded in ways that minimize the LISC's ability to actually provide feedback."<sup>474</sup> The DAAO point to the signing of the fiduciary contract with Canton Community Foundation, and note that the contract was signed without the opportunity for the LISC to provide any meaningful feedback, arguing "Dismissing the LISC's ability to provide meaningful feedback on the fiduciary agreement may not have been malicious, but it does embody DTE's broader disposition towards the

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<sup>472</sup> DAAO brief, 25.

<sup>473</sup> DAAO brief, 26.

<sup>474</sup> DAAO brief, 27.

Council.”<sup>475</sup> Arguing further, the DAAO contend that DTE’s failure to meaningfully engage with the LISC has hindered the projects moving forward because the LISC members have been unable to use their experience in the community to help the projects progress. The DAAO recommends the Commission require DTE to have completed one of the three projects by its next VGP filing, and to complete one project each of the following years.

In its brief, Staff recommends the Commission allow DTE’s request to continue the pilot on the different terms requested in the application. This issue was not addressed further in Staff’s reply brief.

In its reply brief, DTE rejects the DAAO’s assertion that it has not used reasonable efforts to advance the project. DTE points to the testimony of Mr. Cameron to show that it has identified multiple parcels of land that could be used for the projects, and further states, “As for the site in Highland Park that the Company owns and DAAO implies that the Company withheld from use by the Community Impact Pilot, the record reflects that the Company acquired the land for the construction of a substation.”<sup>476</sup>

DTE also rejects the DAAO’s argument that it has not used reasonable efforts to obtain funding for the projects. It notes that the DAAO itself acknowledged the challenges to securing funding and contends that it has worked hard to obtain such funding. DTE points out that it has established a fiscal partnership with the Canton Community Foundation and remains committed to committing \$300,000 to each project. Additionally, DTE argues it has submitted a grant application seeking funds and has “supported the

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<sup>475</sup> DAAO brief, 27-28.

<sup>476</sup> DTE reply brief, 15.

State of Michigan’s successful application for funding from the Solar for All federal grant program.”<sup>477</sup>

Furthermore, DTE asserts it has undertaken reasonable efforts to work with the LISC. DTE argues it has worked closely with the LISC to develop the projects in question, and that the LISC “has played a major role in the work to develop these projects and resolve issues that have emerged.”<sup>478</sup> DTE contends it has acted in accordance with the Partial Settlement Agreement, spearheaded improvements to the LISC meeting structure, and worked with the LISC in developing the fiduciary relationship with the Canton Community Foundation. Additionally, DTE states “DAAO’s argument that the Company has failed to use “reasonable efforts” to engage with the LISC to facilitate the completion of the Community Impact Pilot projects is untrue and should be rejected.”<sup>479</sup> DTE argues that it should not be required to complete the projects on a mandated timeline due to the barriers that have arisen to completing such. It notes the testimony of CEO witness Kenworthy wherein he acknowledged that progress on these projects has been made despite the barriers that have arisen.<sup>480</sup>

In its reply brief, the DAAO argue that Mr. Shannon’s testimony should not be disregarded as proposed by DTE. The DAAO assert:

The Company does not, in its brief, claim that Mr. Shannon misrepresents any specific facts. It does not argue that Mr. Shannon has violated his duties as a Low-Income Solar Council (LISC) member or the terms of the Council’s governing memorandum of understanding. Nor does DTE state that Mr. Shannon’s testimony is inconsistent with his past statements or inherently contradictory to his work on the LISC. In fact, DTE did not object to testimony in this case from another LISC member, Mr. Kenworthy.<sup>4</sup> Instead,

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<sup>477</sup> DTE reply brief, 16.

<sup>478</sup> DTE reply brief, 17.

<sup>479</sup> *Id.*

<sup>480</sup> DTE reply brief, 18.

DTE simply points to the fact that Mr. Shannon is paid for his time working in both capacities, claiming a “unique posture”<sup>5</sup> that somehow justifies its “concerns about [his] role as a witness.”<sup>481</sup>

The DAAO also note that witnesses being paid for their time is not a controversial or uncommon issue. As such, the DAAO argue that DTE has not shown any real basis for the concerns articulated with Mr. Shannon as a witness. This PFD agrees with the DAAO and does not recommend that Mr. Shannon’s testimony be disregarded.

Although the parties differ regarding the reasons for the slow progress of the Community Impact Pilot and DTE’s obligations under the Partial Settlement Agreement, the parties appear to agree that the Community Impact pilot should continue. In addition, Staff agrees with, and no other party appears to object to, DTE’s proposed revision to the terms of the pilot to provide each project with “the same additional benefits of a free energy assessment and an additional monthly participation benefit to be funded by donation dollars.”<sup>482</sup>

The primary area of contention is with respect to the DAAO’s recommendations that the Commission require DTE to contribute more money, agree to a timeline for project completion, and complete at least one project by its next VGP proceeding. While the DAAO witnesses’ frustration with the slow progress of the Community Impact pilot is understandable, the pilot was designed to be primarily funded through donations and grants and the timeline in the Partial Settlement Agreement was contingent on the availability of suitable projects that met minimum requirements. Requiring DTE to contribute money beyond the amount specified in the Partial Settlement Agreement or to

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<sup>481</sup> DAAO reply brief, 3.

<sup>482</sup> 2 Tr 54-55.

construct projects by a certain date even though sufficient funding has not been obtained is contrary to the Partial Settlement Agreement and the charitable nature of the proposed pilot.

In addition, while Mr. Shannon raised concerns regarding the establishment of the non-profit fiduciary, this PFD agrees with Mr. Cameron and Mr. Kenworthy that a non-profit fiduciary is necessary to facilitate external funding as it will allow for tax-deductible contributions and expanded grant opportunities.<sup>483</sup> The establishment of the non-profit fiduciary, along with Mr. Kenworthy's testimony that despite the slow start to this program, "[o]ver the past year, the Community Impact Pilot has seen meaningful progress" and "has now reached a stage where it is positioned to deliver real benefits to low-income customers," supports allowing the pilot to proceed without imposing the deadline and additional funding requirements recommended by the DAAO at this point in time.<sup>484</sup>

The DAAO also recommend the Commission direct DTE to prioritize effective engagement with the LISC and community stakeholders. However, this engagement is already covered by the Partial Settlement Agreement and related MOU in Case No. U-20713, as well as the Low-Income Solar Council Charter.<sup>485</sup> Moreover, the meeting agendas and minutes provided as exhibits in this case indicate DTE has been actively involved with the council.<sup>486</sup>

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<sup>483</sup> Because the non-profit fiduciary is necessary to facilitate external funding and thus procure the solar parks, this PFD also finds that the use of \$25,000 of DTE's funding contribution for this purpose is a permitted use of the money under the Partial Settlement Agreement.

<sup>484</sup> 2 Tr 302-304.

<sup>485</sup> The April 14, 2021 Partial Settlement Agreement in Case No. U-20713, ¶ 10.4.3; April 14, 2021 Memorandum of Understanding in Case No. U-20713; Exhibit A-21.

<sup>486</sup> See Exhibits A-10 (September 5, 2023 meeting), A-13 (May 21, 2024 meeting), A-17 (April 16, 2024 meeting), A-18 (May 21, 2024 meeting), A-22 (July 18, 2023 meeting), DAO-107 (September 18, 2023 meeting), DAO-108 (November 7, 2023 meeting), DAO-109 (February 7, 2022 meeting), DAO-112

Therefore, this PFD recommends that the Commission approve continuation of the Community Impact Pilot with the different terms proposed by DTE. This PFD further recommends that the Commission reject the DAAO's recommendations. However, in light of the concerns raised by the DAAO, this PFD suggests that the Commission expect to see additional progress made on the Community Impact pilot by the company's next VGP proceeding and require DTE to include a status update in its next VGP filing, including an explanation of the efforts taken to implement the Community Impact pilot, a description of any remaining obstacles, and proposals for addressing those obstacles.

G. Community Connection Straw Proposal

In its November 18, 2022 order in Case No. U-20836, p. 456, the Commission directed DTE to file "in its VGP docket, Case No. U-21172, a straw proposal of a Rider 17 community solar project" to accommodate customers unable to participate in DTE's DG program.<sup>487</sup> As directed, in that docket, DTE "put forward its MIGreenPower Community Connection Straw Proposal."<sup>488</sup> Under the straw proposal, the community solar project developer would own the project, be responsible for the development and interconnection process, and handle managing subscribers, applying costs, and credits.<sup>489</sup> The straw proposal did not include any "provision for the on-bill crediting of

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(February 20, 2024 meeting), DAO-114 (July 2, 2024 meeting), DAO-115 (July 16, 2024 meeting), DAO-116 (September 3, 2024 meeting), DAO-117 (September 17, 2024 meeting), DAO-118 (November 19, 2024 meeting), DAO-119 (December 3, 2024 meeting), DAO-120 (December 5, 2023 meeting), DAO-122 (April 2, 2024 meeting), DAO-125 (March 5, 2024 meeting), DAO-126 (May 7, 2024 meeting), and DAO-127 (June 4, 2024 meeting).

<sup>487</sup> See 2 Tr 56, 153-154.

<sup>488</sup> 2 Tr 154. See 2 Tr 56. This proposal is also known as the Community Connection Solar Pilot. 2 Tr 233.

<sup>489</sup> 2 Tr 57, 154.

subscribers to offset the energy that came from participating in a community solar project.”<sup>490</sup>

Rather, under the straw proposal, “[s]ubscribers would pay their full and normal retail rates for any inflowing power they receive. Any credits received through participation in a community solar project would not be included on a DTE bill.”<sup>491</sup> DTE “would purchase all of the energy outflow from the system” and, in return, “would provide the system owners with energy and capacity credits based on the existing PURPA credit structure, as defined in Rider 5.”<sup>492</sup> For projects not more than 550 kW in size, if capacity is needed, DTE would purchase the energy at a price equal to \$63 per MWh and, if capacity is not needed, DTE would purchase the energy at the LMP. Projects larger than 550 kW in size, would be subject to terms and conditions provided under a negotiated agreement.<sup>493</sup> The system owner would “compensate subscribers, presumably through dividends or other payment structures.”<sup>494</sup>

The straw proposal drew “significant criticism from the parties regarding the proposal itself as well as the process by which it was developed,” which the Commission found concerning.<sup>495</sup> While the Commission accepted DTE’s straw proposal as a starting point, the Commission stated the following:

[T]he Commission directs DTE’s attention to the terms committed to in the partial settlement agreement, namely the terms set forth under paragraph 10.4.7 pertaining to on-bill crediting. The Commission finds that the current straw proposal has not incorporated the on-bill crediting that was agreed to in the partial settlement agreement and therefore, directs DTE Electric to

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<sup>490</sup> 2 Tr 154.

<sup>491</sup> 2 Tr 58.

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

<sup>494</sup> 2 Tr 294.

<sup>495</sup> April 25, 2024 order in Case No. U-21172, p. 36. See 2 Tr 155.

revise its straw proposal in its next VGP proceeding to align with the terms of the partial settlement agreement. Further, the Commission encourages DTE Electric to improve upon its collaborative process with the parties in this case and demonstrate within its next straw proposal how the company incorporated intervenor feedback in developing its revision and how it intends to consider other ownership models after the conclusion of its community solar pilot, as stated in paragraph 10.4.5 in the Case Nos. U-20713 *et al.* partial settlement agreement.<sup>496</sup>

Mr. Cameron testified that the straw proposal is distinct and separate from the Community Impact pilot. While the Community Impact pilot is only for low-income subscribers, the Community Connection Straw Proposal is “intended to explore community solar access to all DTE customers.”<sup>497</sup> Mr. Cameron asserted that DTE agreed in the Partial Settlement Agreement to provide on-billing crediting for the Community Impact pilot, but not the Community Connection Straw Proposal. Therefore, DTE is not making any changes to its straw proposal and is resubmitting its prior straw proposal as presented in Case No. U-21172.<sup>498</sup>

DAAO witness Frazier contended that DTE’s refusal to make any changes to its straw proposal does not satisfy the Commission’s order in Case No. U-21172. He noted that DTE indicated in discovery responses that the Company reviewed feedback provided by the intervenors in Case No. U-21172 and sought feedback from 5 Lakes, Ann Arbor, and MI-MAUI, which organizations were not intervenors in that case, by holding a meeting with each organization. However, during these meetings, no documents were exchanged and DTE did not take any notes. Moreover, the company did not make any changes based on the feedback received. DTE indicated it also intended to meet with representatives

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<sup>496</sup> April 25, 2024 order in Case No. U-21172, pp. 36-37. See 2 Tr 155.

<sup>497</sup> 2 Tr 57.

<sup>498</sup> 2 Tr 56-57.

from MEIU, ABATE, and GLREA but ran out of time.<sup>499</sup> Mr. Frazier asserted that “merely intending to meet with stakeholders does not satisfy the Commission’s order to incorporate intervenor feedback” and pointed out that DTE did not meet with, or intend to meet with, the DAAO, the CEO, Staff, or any intervenors in Case No. U-21172.<sup>500</sup> Mr. Frazier argued that reviewing feedback without incorporating any of it did not improve the collaborative process, as encouraged by the Commission’s order in Case No. U-21172. Mr. Frazier indicated that DTE also violated the Commission’s order by failing to revise its straw proposal to include on-bill crediting.<sup>501</sup>

Mr. Frazier maintained that the Community Connection Straw proposal continues to be problematic because it does not provide financial benefits to subscribers comparable to the financial benefits provided under DTE’s existing DG program. Specifically, under the DG program, outflow is priced at a single rate whereas under the straw proposal, outflow is priced at two separate rates, depending on whether capacity is needed. If capacity is not needed, the energy is purchased at the LMP, which Mr. Frazier contends does not “compensate subscribers for avoided transmission and distribution costs.”<sup>502</sup> He further argued that the dependence of the outflow price on whether capacity is needed “means that it is impossible to determine the projected revenue of the project accurately, thus deterring developers and participants from the program.”<sup>503</sup>

Mr. Frazier concluded that, because of the failure to compensate for avoided transmission and distribution costs and the lack of on-bill crediting, which subjects

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<sup>499</sup> 2 Tr 155-156; Exhibits DAO-42 to DAO-47 and DAO-138 to DAO-139.

<sup>500</sup> 2 Tr 156-157.

<sup>501</sup> 2 Tr 157-158.

<sup>502</sup> 2 Tr 158-159.

<sup>503</sup> 2 Tr 159.

subscribers to “unreasonably high up-front costs,” the Community Connection Straw Proposal does not provide affordable energy to LMI communities and cannot serve as a replacement for DG.”<sup>504</sup>

CEO witness Kenworthy and MEIU witness Sherman had similar concerns regarding the Community Connection Straw Proposal and the CEO and MEIU jointly proposed an alternative approach as set forth in Exhibits CEO-3 and MEIU-15.<sup>505</sup> Mr. Kenworthy explained that credit rate under the straw proposal differs from the MIGreenPower bill credit rate and, therefore, “does not fully align with other VGP offerings.”<sup>506</sup> Participants in the Community Connection Solar Pilot “would receive a lower credit than customers enrolled in MIGreenPower, despite both being solar assets operating in the Company’s generation portfolio.”<sup>507</sup> Mr. Kenworthy described the imposition of a lower credit rate when solar assets are not owned by the Company as “inequitable and anti-competitive” and “discriminatory and unreasonable.”<sup>508</sup> He stated that DTE provided no justification for this difference. He also criticized the fact that for Community Connection customers, unlike typical MIGreenPower customers, the Company does not include on-bill crediting in its straw proposal, which will make it harder for Community Connection customers to access and understand their savings.<sup>509</sup> He alleged that “by deviating from a true community solar model – failure to offer on-bill

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<sup>504</sup> 2 Tr 143, 160.

<sup>505</sup> 2 Tr 232-251, 294-298.

<sup>506</sup> 2 Tr 295.

<sup>507</sup> *Id.*

<sup>508</sup> *Id.*

<sup>509</sup> 2 Tr 295-296.

crediting, excluding third-party ownership, and using a different credit rate – the proposal does not fully align with best practices for community solar programs.”<sup>510</sup>

Dr. Sherman argued that the Community Connection Solar Pilot is not a new offering and that DTE “appears to simply have asserted under this ‘pilot’ that third-party developers can build Qualifying Facilities and sell the energy to DTE at the existing PURPA rates under Rider 5.”<sup>511</sup> Therefore, she contended that the “‘pilot’ in essence is no different than the existing Rider 5 tariff.”<sup>512</sup> She described her understanding of community solar and the benefits of community solar.<sup>513</sup> She opined that “DTE’s proposal does not constitute community solar by any commonly accepted definition” because the proposal “does not offer the option to purchase or lease solar panels and receive an electric bill credit, does not offer community ownership, and is not designed or intended to result in economic benefits for customers (any such benefit being accidental).”<sup>514</sup>

Dr. Sherman did agree with Mr. Cameron that the on-bill crediting provisions in the Partial Settlement Agreement applied to the Community Impact pilot and not the Community Connection Solar Pilot. However, she suggested that on-bill crediting not be limited to the Community Impact pilot.<sup>515</sup> She also noted that regardless of whether the Commission incorrectly applied the Partial Settlement Agreement to the Community Connection Solar Pilot, the Commission also imposed the separate requirement of collaborating with the intervenors in that case and incorporating their feedback. She

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<sup>510</sup> 2 Tr 296.

<sup>511</sup> 2 Tr 234.

<sup>512</sup> *Id.*

<sup>513</sup> 2 Tr 235-237.

<sup>514</sup> 2 Tr 235.

<sup>515</sup> 2 Tr 239.

alleged that by refiling the straw proposal without any changes, the company did not comply with the Commission's order. She pointed out that not only did DTE not incorporate intervenor feedback, but the company did not seek intervenor feedback.<sup>516</sup>

Dr. Sherman summarized her concerns as being "that the Community Connection Solar Pilot (1) does not represent anything new, (2) is not a community solar program, and (3) would likely never be utilized by a third-party developer."<sup>517</sup> To address these issues, the MEIU, jointly with CEO, proposed a modification to the Community Connection Solar Pilot. However, Dr. Sherman clarified that the modified framework does not represent MEIU's ideal community solar or compare to "effective, robust community solar programs in other states," but, when combined with the proposed Rider 17 credit changes, is "a modest improvement" over the company's proposal.<sup>518</sup> Similarly, Mr. Kenworthy testified that the MEIU/CEO proposal does not "create a fully developed or scalable community solar program," but is a first step to establish a framework by which community solar project can become viable.<sup>519</sup>

Under the MEIU/CEO proposal, as described in Exhibits CEO-3 and MEIU-15, a third-party developer would develop, build, interconnect, and own a solar project with a nameplate capacity of not more than 5 MW.<sup>520</sup> The developer would independently finance the project through a combination of tax credits, grants, traditional financing, and subscription fees. The third-party developer would deliver energy from the project to DTE at no cost to the Company (i.e., DTE would pay \$0 per MWh). DTE customers would

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<sup>516</sup> 2 Tr 239-242. See Exhibits MEIU-4 to MEIU-14.

<sup>517</sup> 2 Tr 242.

<sup>518</sup> 2 Tr 242-243, 249.

<sup>519</sup> 2 Tr 297.

<sup>520</sup> 2 Tr 243.

subscribe to the project. DTE would treat these subscribers the same as all other customers under the VGP program in that subscribers would pay full retail rates for electricity used on site, pay DTE's full cost of the solar project (costs to administer the program), and receive a credit equal to the Rider 17 credit.<sup>521</sup>

Subscribers would pay a subscription fee either through consolidated building or dual billing. Under a consolidated billing system, the utility charges, solar project credit, and subscription fee would be included on a single bill from DTE. DTE would then remit an amount equal to the subscription fee minus DTE's administrative cost to implement the on-bill system to the third-party developer. Under a dual billing system, the customer would receive two separate bills – one bill from DTE that includes the utility charges and solar project credit and one bill from the solar project owner that includes the subscription fee. Dr. Sherman explained that dual billing is “more confusing to customers because it requires off-bill calculations of savings related to the solar project.”<sup>522</sup> She noted that a Lawrence Berkeley National Laboratory report indicated that subscriber turnover decreases by 20% for projects that use consolidated billing instead of dual billing. Because of this, she opined that consolidated billing is the preferable approach.<sup>523</sup> Ms. Sherman anticipated that because DTE is already instituting on-bill crediting for the Community Impact pilot, there would be some cost savings if a similar on-bill crediting system is instituted for the Community Connection Solar Pilot.<sup>524</sup>

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<sup>521</sup> 2 Tr 243-245, 296-298. Ms. Sherman also recommended modifications to the Rider 17 credit that, if adopted, would apply to all MIGreenPower customers, including Community Connection customers. 2 Tr 244.

<sup>522</sup> 2 Tr 245-246.

<sup>523</sup> 2 Tr 245.

<sup>524</sup> 2 Tr 246.

Dr. Sherman argued that the 5 MW maximum capacity under the MEIU/CEO proposal is appropriate because DTE's PURPA standard offer tariff should be for projects with a capacity of not more than 5 MW as opposed to the current 550 kW cap. She maintained that this is required under the Commission's January 21, 2021 order in Case No. U-20905 *et al.*, p. 26.<sup>525</sup>

Dr. Sherman described the MEIU/CEO proposal and DTE's Community Connection Solar Pilot as differing in the following critical ways:

First, it requires the Company to treat subscribers to the Community Connection Solar Pilot as it does all other MIGreenPower subscribers. In other words, it requires on-bill crediting at the Rider 17 credit rate. Second, this proposed framework *lowers* the payment to third-party developers for the output delivered from the solar facility to \$0 per MWh, ensuring that the costs to the Company, if any, are well accounted for in the existing administrative costs. Subscribers to this proposed modified framework would be expected to pay these same small administrative costs on their utility bills. Third, the proposal requires the Company to set the standard offer tariff for this program at 5 MW.<sup>526</sup>

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<sup>525</sup> 2 Tr 247-48. PURPA requires the Federal Energy Regulatory Commission (FERC) to prescribe rules that require electric utilities to purchase electric energy from qualifying cogeneration facilities and qualifying small power production facilities. 16 USC 824a-3(a). As described in the January 21, 2021 order in Case No. U-20905 *et al.*, pp. 1-3, on July 16, 2020, FERC issued Order 872, which included significant revisions to the PURPA rules, including a revision that reduced the capacity at or below which there is a rebuttable presumption that a qualifying small power production facility does not have nondiscriminatory access to the market, thus obligating an electric utility purchase energy from it, from 20 MW to 5 MW, although this reduction did not affect existing contracts. See 18 CFR 292.309(d)(2) and (3). The January 21, 2021 order in Case No. U-20905 *et al.*, p. 26, provided that determinations on the proper standard offer cap level "should be made in each utility's avoided cost review." However, the Commission agreed with Staff that setting "the standard offer cap at 5 MW may be a viable option given the lowering of the presumption of non-discriminatory market access from 20 MW to 5 MW." January 21, 2021 order in Case No. U-20905 *et al.*, p. 26. Therefore, the Commission directed a utility that receives authorization from FERC to terminate its obligation to purchase from qualifying facilities above 5 MW, "in its next avoided cost review that follows termination, to explain and support its position on the standard offer cap. Should a utility not propose a standard offer cap being set at 5 MW, it should provide a rationale as to why such a standard offer cap is not appropriate." *Id.* DTE received authorization from FERC to terminate its obligation to purchase from qualifying facilities above 5 MW on April 8, 2022. 2 Tr 247.

<sup>526</sup> 2 Tr 249-250.

In his rebuttal, Mr. Frazier addressed the MEIU/CEO proposal. He supported “the aspects of the MEIU/CEO Proposal that would allow for a fairer credit than DTE’s Community Connection Straw Proposal and for the adoption of on-bill crediting.”<sup>527</sup> He noted that the proposal does not include compensation for avoided transmission and distribution costs, which he recommends, but does allow Community Connection subscribers to receive the same bill credit as all other Rider 17 subscribers. Therefore, if the Commission does not adopt his recommendations regarding the value of a community solar credit, he supports the adoption of the joint proposal regarding the value of the credit.<sup>528</sup> He also supports on-bill crediting for the reasons discussed in his direct testimony.<sup>529</sup> While the proposal allows subscription fees to be handled in one of two possible ways, consolidated billing or dual billing, he supports the consolidated billing option because it is more transparent, less confusing, and more beneficial for customers than dual billing. He opined that “[d]ual billing is likely to cause confusion and potentially hinder the success of the program.”<sup>530</sup>

Although Mr. Frazier supports aspects of the joint proposal, he stated that the proposal could be improved by (1) encouraging community ownership to ensure that the community receives the benefits of community solar; (2) facilitating knowledge transfer to communities through knowledge sharing and training on how communities can develop, own, and operate solar arrays; and (3) committing to new job opportunities created by community solar in low-income and Black, Indigenous, and People of Color (BIPOC)

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<sup>527</sup> 2 Tr 167.

<sup>528</sup> *Id.*

<sup>529</sup> 2 Tr 168.

<sup>530</sup> 2 Tr 166, 168.

communities by providing job training to community members and requiring that labor for the construction and maintenance of solar arrays be sourced from the communities in which they are located. He argued that without these provisions “a program developed under this joint proposal could continue to operate as a top-down corporate initiative rather than a true community-led energy solution.”<sup>531</sup>

In connection with this, Mr. Frazier also addressed the CEO’s and MEIU’s proposal to improve the Rider 17 credit by (1) including the full avoided cost of renewable energy that would otherwise be required to comply with the renewable energy standard and (2) basing the value of capacity provided by Rider 17 resources on DTE’s cost of capacity as determined in DTE’s most recently approved rate case rather than the MISO auction clearing price. While Mr. Frazier agreed “that the current Rider 17 credit calculation undercompensates customers” and supports “increasing the credit in line with their recommendations,” he repeated his position that the credit for community solar projects should include additional factors beyond what the CEO and MEIU recommend in terms of the Rider 17 credit.<sup>532</sup>

Mr. Cameron responded that DTE does not agree with Mr. Frazier’s concerns regarding the Community Connection Straw Proposal. He emphasized that DTE agreed to provide on-bill crediting related to the Community Impact pilot, not the Community Connection Straw Proposal.<sup>533</sup> He further noted that there are many community solar models, including models “where third-party owners manage bill-credits for their

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<sup>531</sup> 2 Tr 169-171.

<sup>532</sup> 2 Tr 172-173.

<sup>533</sup> 2 Tr 90-91. Mr. Cameron noted that the Company is implementing on-bill crediting for its Community Impact pilot consistent with the Partial Settlement Agreement. 2 Tr 91.

subscribers,” and that there is not a controlling statute that governs this issue.<sup>534</sup> He contended that this approach ensures “that non-participating customers are not subject to costs for the program.”<sup>535</sup>

Mr. Cameron maintained that the compensation to be provided for the outflow “is reasonable and is based on the existing PURPA credit structure for avoided costs, as defined in Rider 5.”<sup>536</sup> He noted that this approach links a developer’s compensation to the market value of energy and capacity generated on their behalf, which is an appropriate cost-based compensation approach for third-party generating assets that are not co-located with load, and prevents non-participating customers from having to subsidize any credit for Community Connection subscribers.<sup>537</sup>

For the same reasons, Mr. Cameron did not agree with the MEIU/CEO proposal to modify the Community Connection Solar Pilot. He stated that DTE’s “responsibility is to provide a cost-based and accessible program.”<sup>538</sup> He repeated his position that providing compensation at market value ensures that non-participating customers do not subsidize the compensation provided to participating customers and that the Community Connection Solar Pilot “should use a cost-based compensation approach which is approved for third-party generating assets that are not co-located with load (Rider 5).”<sup>539</sup> Regarding on-bill crediting, he referred to his rebuttal to Mr. Frazier’s testimony.<sup>540</sup>

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<sup>534</sup> 2 Tr 91.

<sup>535</sup> *Id.*

<sup>536</sup> *Id.*

<sup>537</sup> 2 Tr 91-92.

<sup>538</sup> 2 Tr 93.

<sup>539</sup> *Id.*

<sup>540</sup> 2 Tr 93-94.

Mr. Cameron also addressed Dr. Sherman's criticism of the company's collaborative efforts. First, he noted that the April 25, 2024 order in Case No. U-21172, pp. 36-37, "encouraged," but did not require, DTE to improve its collaborative process and incorporate feedback. Second, he noted that, despite this not being a requirement, DTE did engage in meetings with several organizations to get feedback on its straw proposal, which evidences an improvement in DTE's collaborative efforts.<sup>541</sup>

In addition, Mr. Cameron disputed Dr. Sherman's claim that DTE's PURPA standard offer threshold should be set at 5 MW instead of the 550 kW agreed to in the settlement approved by the August 22, 2024 order in Case No. U-18091.<sup>542</sup> He asserted that Dr. Sherman is attempting to relitigate this issue and noted MEIU did not intervene in Case No. U-18091.<sup>543</sup>

In its brief, DTE submits that it has complied with the Commission's directive in Case No. U-21172 by resubmitting the community solar straw proposal in the instant matter. DTE reiterates it was not required to include on-bill crediting in the community solar proposal because "the Partial Settlement Agreement in Case Nos. U-20713, et al., did not contemplate or otherwise establish that the Company's commitment to provide on-bill crediting would extend beyond the Community Impact Pilot."<sup>544</sup> Pointing to the testimony of Mr. Cameron, DTE asserts that a community solar offering is not required to have on-bill crediting supported by the electric provider and that the current proposal is

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<sup>541</sup> 2 Tr 94-95.

<sup>542</sup> Case No. U-18091 was DTE's most recent avoided cost review pursuant to MCL 460.6v and PURPA. The settlement agreement in Case No. U-18091 provides for a max capacity of 550 kW for the standard offer rate. Exhibit A to the August 22, 2024 order in Case No. U-18091.

<sup>543</sup> 2 Tr 95.

<sup>544</sup> DTE brief, 38.

consistent with the Commission's prior findings that there is not one model for community solar and does not require third-party ownership.

DTE further notes that there was only five months between the Commission's April 25, 2024 Order and the September 23, 2024 filing date in this matter. As such, DTE asserts it had limited time to enhance its collaborative efforts, but that it did engage stakeholders "to inform the development of the community solar straw proposal."<sup>545</sup> DTE argues that it took feedback from stakeholders into consideration and sought feedback from Dr. Sherman (although ultimately being unable to meet with her) prior to submitting the straw proposal in this case.

Addressing the recommendations of Mr. Frazier, DTE argues the Commission should reject his recommendations as they involve subsidization of the projects by non-subscribers. DTE asserts the proposed compensation structure for participants "is reasonable and is based on the existing PURPA credit structure for avoided costs, as defined in Rider 5."<sup>546</sup> DTE contends that the current proposal uses a cost-based compensation system and that "Providing greater benefits through a different compensation structure based on the credits currently received by DG customers would lead to the cross subsidization of these projects by non-subscribers."<sup>547</sup>

DTE argues that adopting the MEIU/CEO joint proposal regarding community solar would clash with the Commission's guidelines for VGP programs. DTE asserts that "The joint proposal describes a program that would lead to cross-subsidization of the

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<sup>545</sup> DTE brief, 39.

<sup>546</sup> DTE brief, 40.

<sup>547</sup> *Id.*

community solar program by ratepayers for the benefit of developers.”<sup>548</sup> Arguing further, DTE states that its responsibility is to provide an accessible and cost-based program for potential community solar subscribers, not to create a proposal that is attractive to third-party solar developers. DTE additionally states, “Providing additional benefits beyond those provided to ‘third-party generating assets that are not co-located with load’ under Rider 5 would lead to cross-subsidization.”<sup>549</sup> As such, DTE asserts the Commission should reject the joint MEIU/CEO proposal and find that the company’s community solar straw proposal and the process of developing such comply with the requirements the Commission laid out in U-20836 and U-21172.

In its brief, the DAAO argues DTE has not improved its collaborative process with the parties, incorporated intervenor feedback into its proposal, nor demonstrated how it intends to consider other ownership models. Noting that DTE claims to have reviewed feedback provide by intervenors in U-21172, the DAAO argues that such a review is not an improvement on the collaborative process but a regurgitation of the steps DTE took from U-20836 to U-21172. Further, the DAAO rejects DTE’s claim that it ran out of time to meet with intervenors as an excuse, further noting that DTE did not list any individuals from the DAAO or CEO as individuals it would have met with had there been more time. The DAAO also argue that DTE has failed to demonstrate how it incorporated any feedback from outside parties into the current proposal.<sup>550</sup>

The DAAO additionally contend that DTE has violated the Commission’s Order in Case No. U-21172 by not including a provision for on-bill crediting as part of the straw

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<sup>548</sup> DTE brief, 41.

<sup>549</sup> *Id.*

<sup>550</sup> DAAO brief, 31-32.

proposal. The DAAO assert that if DTE was not satisfied with the Commission's April 25, 2024 Order, it should have undertaken the appropriate procedures to challenge the Order. Further, the DAAO assert that DTE's proposal does not offer the benefits that a community solar program should offer, namely that it should "should expand access to solar energy to low-income communities, allow community members to save money on their energy bills, and empower communities to build local community wealth."<sup>551</sup> The DAAO assert that DTE's proposal violated MCL 460.1061 because it does not provide participants with the financial savings contemplated under the statute.

The DAAO aver the Commission should reject DTE's community solar straw proposal and adopt the DAAO's recommendations.<sup>552</sup> If the Commission declines to adopt the DAAO's recommendations, it recommends the Commission adopt a modified version of MEIU/CEO's joint proposal. The DAAO suggest modifying the MEIU/CEO joint proposal to "include provisions for community ownership and/or community control as well as provisions that ensure knowledge transfer to communities, especially low-income communities and communities of color, on how to own and operate solar energy."<sup>553</sup>

In its brief, MEIU notes the current proposal is the same as was offered in Case No. U-21172, and claims that the proposal qualifies as community solar. MEIU relies on the testimony of Dr. Sherman wherein she describes what a community solar program is<sup>554</sup>. MEIU contends that DTE has not complied with the Commission's instructions to improve its collaborative process or incorporate feedback into its proposal by submitting

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<sup>551</sup> DAAO brief, 34.

<sup>552</sup> The recommendations of Khary Frazier are found at 2 Tr 142-144.

<sup>553</sup> DAAO brief, 38.

<sup>554</sup> MEIU brief, 11-12.

the same proposal as in U-21172. MEIU argue the proposal “remains problematic for being (1) nothing new; (2) not a community solar program; (3) unlikely to ever be used by a third-party developer.”<sup>555</sup>

MEIU argues the Commission should order DTE to make changes to the proposal. MEIU suggests the Commission should consider the joint MEIU/CEO proposal (contained in Exhibit MEIU-15) as a foundational framework for developing a community solar program. MEIU points to the testimony of Dr. Sherman at 2 Tr 243-244 for an overview of the joint proposal. MEIU relies on the testimony of Dr. Sherman (noted above) in describing why the Commission should adopt the joint proposal. Responding to Mr. Cameron’s criticisms of the joint proposal, MEIU argues the criticism aimed at the proposed credit structure “are not a criticism of the joint proposal itself but rather a broader (incorrect) complaint about the larger issue of the appropriate methodology for VGP credits under Rider 17 as a whole.”<sup>556</sup> MEIU further asserts that DTE has not adequately justified its refusal to set its standard offer tariff threshold at 5 MW. MEIU therefore recommends the Commission adopt the MEIU/CEO joint proposal.

The CEO, in their brief, argue that the Commission should find DTE’s proposal inadequate and order it to be replaced with the joint MEIU/CEO proposal. The CEO argue that the joint proposal is a middle-ground option which delivers some but not all benefits of community solar. Referring to the testimony of Mr. Kenworthy, the CEO assert that DTE’s proposal fails to offer on-bill crediting or “a credit rate which fairly compensates customers for the value of the capacity and energy delivered by potential community solar

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<sup>555</sup> MEIU brief, 13.

<sup>556</sup> MEIU brief, 17.

arrays.”<sup>557</sup> Again pointing to the testimony of Mr. Kenworthy, the CEO state that participants in the proposed program would receive a lower credit than customers enrolled in MiGreenPower, which they argue leads to discriminatory and unreasonable treatment which should be rejected by the Commission.

The CEO contend that DTE has not engaged in the intervenor’s critique of the proposal, and states:

Instead, the Company repeats the same exercise undertaken in the prior case – proposing a non-viable community solar program that it knows could never come to fruition. In order to break this cycle, the Commission must order DTE to propose a more complete community solar program which can viably deliver renewable energy to customers that would otherwise not be able to access it.<sup>558</sup>

The CEO argue that the adoption of the joint proposal will serve as a steppingstone toward community solar development and will “move the parties off the existing stalemate.”<sup>559</sup> The CEO again point to the testimony of Mr. Kenworthy wherein he describes the joint proposal (contained in Exhibit CEO-3) and reiterates that the joint proposal is not meant to be a complete solar program, but “an important step on the path to community solar that allows developers, interested customers, and the Company to take advantage of the significant public funding available for such programs.”<sup>560</sup>

In response to Mr. Cameron’s rebuttal regarding the joint proposal, the CEO assert that “DTE attempts to draw a distinction without difference in proposing to compensate potential third-party owned community solar projects differently from its own VGP fleet.”<sup>561</sup>

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<sup>557</sup> CEO brief, 7-8.

<sup>558</sup> CEO brief, 9.

<sup>559</sup> *Id.*

<sup>560</sup> CEO brief, 10.

<sup>561</sup> CEO brief, 11.

The CEO argue that DTE’s proposal would create windfall for the company, asserting that “A cost-based payment structure would recognize the value the Company accrues from the relied-upon energy and capacity of the solar array. The Commission can fix this flaw in the Company’s Community Connection straw proposal by ordering compensation at the existing VGP, Rider 17 rate.”<sup>562</sup> Regarding on-bill crediting, the CEO argue that DTE does not have a plan to mitigate the downsides of a separate billing structure, or even acknowledge such downsides and contend that on-bill crediting provides a more accessible way for participants to track and realize the financial benefits of the plan. As such, the CEO recommend the Commission adopt the MEIU/CEO joint proposal for community solar.

In its reply brief, Staff responds to the DAAO’s contention that DTE’s community solar project is inadequate because it does not allow community members to save money on their energy bills and fails to provide the subscribers with savings from avoided transmission and distribution costs. Staff argues that “no showing has been made that the savings actually exist, let alone how much they may amount to or whether or not those benefits would exceed the cost of the facilities under the program, the claims are unsupported and should not be considered to support DAAO’s requested relief.”<sup>563</sup> Staff asserts that a community solar program should only result in economic gain to the participants to the extent the benefits outweigh the costs. Staff argues no program has shown those characteristics; therefore, the claim should not be considered.

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<sup>562</sup> *Id.*

<sup>563</sup> Staff reply brief, 16.

In its reply brief, DTE argues it engaged with individuals from the City of Ann Arbor, 5 Lakes Energy, and MI-MAUI and sought feedback from Dr. Sherman before submitting the proposal in question. The Company acknowledges that the proposal submitted in this matter was the same that was submitted previously but asserts that any arguments that it failed to complete the encouraged outreach are erroneous. DTE also argues that the community solar straw proposal in this case is consistent with the Commission's directives in the April 25, 2024 Order in Case No. U-21172.

DTE further asserts it should not be required to adopt the MEIU/CEO joint proposal. DTE refers to the Commission's April 25, 2024 Order in U-21172 to support its contention that there is not one accepted model for community solar and also notes that Michigan does not have an enabling statute for such. DTE argues that adopting the joint proposal would lead to cross-subsidization by non-participants and states, "Using the system of credits provided to DG customers as the credit system for community solar subscribers would provide benefits beyond the cost-based, market-value of the energy produced."<sup>564</sup> DTE further states, "These alternative community solar proposals should be rejected because they are not aligned with the Company's mission to develop a VGP program that is cost-of-service based and not cross-subsidized by non-participating customers."<sup>565</sup>

In its reply brief, the DAAO reiterates its assertion that DTE is improperly challenging the Commission's April 25, 2024 Order in Case No. U-21172 regarding on-bill crediting. The DAAO contend that despite DTE's claim that the Partial Settlement

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<sup>564</sup> DTE reply brief, 20.

<sup>565</sup> DTE reply brief, 22.

Agreement speaks only to the Community Impact Pilot, the April 25, 2024 Order requires the addition of on-bill crediting. Additionally, the DAAO argue the Commission should reject DTE's proposal, contending it does not provide subscribers with the cost-savings benefits required under MCL 460.1061. The DAAO state, "Specifically, DTE's Community Connection proposal would not compensate its subscribers for their reduced use of the transmission and distribution systems."<sup>566</sup>.

The CEO also recommend that the Commission find DTE's community solar proposal to be inadequate and argues that the record does not contain evidence showing that further compensation under the Community Connection plan would lead to cross-subsidization.

This PFD agrees with Mr. Cameron and Dr. Sherman that the Partial Settlement Agreement in in Case No. U-20713 pertains to the Community Impact pilot and not the Community Connection Straw Proposal. However, the Commission's April 25, 2024 Order in Case No. U-21172 states:

The Commission finds that the current straw proposal has not incorporated the on-bill crediting that was agreed to in the partial settlement agreement and therefore, directs DTE Electric to revise its straw proposal in its next VGP proceeding to align with the terms of the partial settlement agreement.<sup>567</sup>

Therefore, this PFD agrees that DTE has not complied with the Commission's instructions regarding on-bill crediting. This PFD also agrees with Mr. Cameron that the Commission's April 25, 2024 order in Case No. U-21172, p. 36, encouraged, but did not require, DTE to improve its collaborative process. However, it is troubling that, despite the Commission's

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<sup>566</sup> DAAO reply brief, 8.

<sup>567</sup> Case No. U-21172, April 25, 2024 Order, page 36.

clear concerns regarding the adequacy of the straw proposal as originally proposed, DTE resubmitted the straw proposal without any changes. In essence, DTE used technicalities in the wording of the order to avoid addressing the significant criticism of the program that the Commission found concerning.<sup>568</sup> Therefore, this PFD recommends that the Commission clarify its prior order by *requiring* DTE to do all of the following:

1. Revise its straw proposal to incorporate on-bill crediting. As noted by the intervenors in this case, not using on-bill crediting subjects customers to high up-front costs and makes it more difficult for customers to access and understand their savings.
2. Improve its collaborative process by meeting with the parties to this case, to the extent the parties make themselves available, to discuss their concerns and suggestions regarding the Community Solar Straw Proposal, including consideration of the MEIU/CEO proposal.
3. Demonstrate within its next straw proposal how the Company incorporated the feedback from the meetings with the parties to this case and, to the extent feedback is not incorporated, explain why the feedback is not incorporated.

While this PFD believes the MEIU/CEO proposal merits further consideration, this PFD does not recommend adoption of the MEIU/CEO proposal as part of the current case, except for the portion of the proposal that requires on-bill crediting. Regarding the portion of the proposal that would set the standard offer tariff for the program at 5 MW

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<sup>568</sup> See April 25, 2024 order in Case No. U-21172, p. 36.  
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instead of 550 kW based on PURPA, this PFD agrees with DTE that its PURPA standard offer tariff should not be relitigated in this case. Regarding the portion of the proposal that would require subscribers to receive a credit equal to the Rider 17 credit instead of the Rider 5 credit, this PFD would prefer to see more analysis regarding how a community solar program compares to a VGP program and whether unsubscribed customers will end up subsidizing community solar customers if a credit equal to the Rider 17 credit is provided, as claimed by the company.

For similar reasons, this PFD does not recommend that the Commission adopt Mr. Frazier's proposal to compensate community solar customers at the same rate as DG customers with rooftop solar. In Case No. U-21585, the Commission agreed with Staff that community solar customers should not be compensated using the virtual DG rate because "most community solar projects are located off-site from the customer, thus requiring energy to be transported through the distribution system to the community solar customer. The virtual DG rate would compensate the community solar customer as if they are not using the distribution system, 'which they clearly are to a varying extent depending on relative location.'"<sup>569</sup>

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<sup>569</sup> March 21, 2025 order in Case No. U-21585, pp. 400-401 (quoting Staff's testimony in that case at 5 Tr 3879).

IV.

**CONCLUSION**

In considering the whole record, as set forth in the foregoing discussion of the disputed issues, this PFD recommends that the Commission adopt the findings, conclusions, and recommendations set forth above.

MICHIGAN OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

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Christopher S. Saunders  
Administrative Law Judge

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